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A

General Abridgment

OF

LAW and EQUITY

Alphabetically digeſted under proper TITLES

WITH

NOTES and REFERENCES

to the WHOLE.

By CHARLES VINER, *Eſq*;

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ALDERSHOT *in* Hampſhire *near* Farnham *in* Surry:

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MYSEUM
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2. But if the Under-Bailiff returns too ſmall Iſſues by Covin and Procurement of the Bailiff, who is Judge, this is a good Cauſe to remove the Plea. 45 Ed. 3. 7. Br. Cauſe de Remover &c. pl. 9. cites S C. —— Fitzh. Cauſe de Remover &c. pl. 9. cites S. C.

3. In an Aſſiſe, if the Bailiff of the Franchiſe does not ſue the Record of the Day that the Plaintiff hath in the Franchiſe, this is not any Cauſe to remove the Plea, for the Record is at all Times to be ſued by the Plaintiff or Demandant. 27 Aſſ. 72. by all the Juſtices. Br. Conuſance, pl. 42. cites S C. —— Fitzh. Conuſans, pl. 58. cites S. C.

4. It is a good Cauſe to remove a Plea, that the Bailiff, who is the Judge, is of the Robes of the Plaintiff. 12 H. 4. 13. Br. Cauſe de Remover &c. pl. 13. cites S. C. and 11 H. 4. 11. per Hank. —— In Aſſiſe of Freſh-Force the Tenant by Recordare removed the Plea *out of the Court of ancient Demeſne* becauſe the Bailiff was of the Robes of the Plaintiff, and favours him, and it was remanded; for the *Suitors are Judges*, and not the Bailiff, and the Lord ſhall not be prejudiced. Br. Cauſe a Remover, pl. 14. cites 12 H 7. 17. —— *But* where it is removed *out of the County into Bank* becauſe the Sheriff is of the Robes of the Plaintiff, and favours him, this ſhall not be remanded; for *the one Court and the other is the King's Court*; Note the Diverſity. Ibid.

5. If Conuſance be granted to be held before the Mayor and Bailiffs, if one of one Bailiffs brings an Action within the Franchiſe, it is no Cauſe to remove the Plea, quia favet, becauſe he himſelf is Judge; for if the Defendant takes this Exception, there the Plaintiff ought to ſtay his Action till he be out of his Office, otherwiſe it is Error. 2 H. 4. 4. b. Br. Cauſe de Remover &c. pl. 11. cites S. C. —— Fitzh. Cauſe de Remover, pl. 6. cites S. C. —— Br. Parol &c. remanded, pl. 2. cites S. C. that the Parol was remanded Ex aſſenſu omnium Juſticiariorum de C. B. —— *Writ of Right-Cloſe* was ſued *in ancient Demeſne* in O. and the *Tenants*, pending the Writ, *ſued Recordare to the Sheriff* of the County to remove the Parol, *and alleged Cauſe* in the Writ, Eo *quod J. N. ſub-ballivus* Curiæ illius *eſt conſanguineus* petentis & favet petentem; and per tot. Cur. this is no ſufficient Cauſe; * for he is not Judge, for the *Suitors are Judges*, and if he makes an ill Pannel, the Party may challenge; and per Cur. it is not any ſufficient *Cauſe* to remove the Parol, but Quia *clamat tenere ad communem Legem generally*, or *per finem in Curiæ Regis levatum*, or other ſuch Matter of Record; for the Right of Land in ancient Demeſne ſhall not be tried here in Bank, but the ſaid two Cauſes may be determined here, and if the Cauſes are found falſe, to remand the Parol, and if not, then all ſhall abate, and the Party ſhall ſue at Common Law, and ſo ſee that they *ſhall not proceed upon this Original which comes out of the baſe Court*; Quod Nota, per Cur. and if *Eſſoin* be *caſt for the Tenants at the Day* &c. *it ſhall be quaſhed, be the Cauſe ſufficient or not*; for if it be not ſufficient, the Parol ſhall be remanded, and if it be ſufficient, the Parties ſhall ſue at the Common Law by Writ, and not upon this Plaint which is ſo removed; Quod Nota, per Judicium ibidem. Br. Cauſe a Remover, pl. 7 cites 34 H. 6. 35.

* S. P. Br. Cauſe a Remover, pl. 12. cites 3 H. 4. 14 —— S. P. ibid. pl. 30. cites 11 H. 6. 10. unleſs the Bailiff was Judge.

Br. Conuſance pl. 27. cites 8 H. 6. 18 S C. per Cotton. [And

6. If Conuſance be granted to be held before the Bailiff, if an Action be brought againſt the Bailiff, this is good Cauſe to remove the Plea, becauſe he cannot be his own Judge. 8 H. * 9. 19. 6.

* Roll ſeems to be miſprinted (9) for (6) —— The holding the Plea before himſelf is no Cauſe to remove the Plea; for the Plea may have Writ of Error if &c. Br. Cauſe de Remover &c. pl. 39. cites 35 H. 6. 54.

* Br. Reſummons pl. 9. cites S. C.

7. Failure of Right in a Franchiſe is good Cauſe to remove. * 11 H. 4. 27. b. † 8 H. 6. 20.

——Br. Conuſans, pl. 16. cites S. C. —— Br. Voucher, pl. 161. cites S. C. —— Fitzh. Reſummons, pl. 12. cites 11 H 4. 21. S. P. [but it ſeems it ſhould be 11 H. 4. 27 b. pl. 52.]

† Br. Conuſans, pl. 27 cites S. C.

In Aſſiſe the Bailiff of the Franchiſe demanded Conuſance of the Plea, and had it, and after *Re-attachment* was ſued becauſe the *Bailiff had failed of Right*, and was Pone per Vad' *Ita quod loquela illa ſit*, &c. *in eodem Statu* &c and that *Ballivi ibi de recto deficiant*, and quod habeat Corpora Jur'. &c. Br. Conuſance, pl. 41. cites 26 Aſſ. 67.

* Br. Reſummons, pl. 9. cites S. C.

8. (As) If a Foreigner be vouched in a Franchiſe, this is a good Cauſe to remove it for Failure there. * 11 H. 4. 27. b. 8. H. 6. 20.

——Br. Conuſans, pl. 16. cites S. C.——Br Voucher, pl 161. cites S. C. ——Fitzh. Reſummons, pl. 12. cites 11 H. 4. 21. [but it ſeems miſprinted, and that it ſhould be 11 H. 7. 27. b. pl. 52.]

9 So if a Plea be pleaded that bears Date out of the Juriſdiction. 8 H. 6. 20.

10. If Conuſance be to be held before the Bailiff of an Abbot, (as it ſeems to be intended) and a real Action is brought againſt the Abbot, and the Abbot ſaith, that he hath the Land of the Gift of the King, and prays Aid of the King, this ſhall not be any Cauſe to remove the Plea, for he hath not failed of Right there; for he may have Aid of the King, and the King may ſend to the Juſtices to proceed to Judgment, as well as in Banco. 21 Ed. 3. 38. b. adjudged.

Br. Conuſans, pl. 27. cites S. C.

11. If they will err voluntarily in a Thing of which a Writ of Error lies, and this can be reformed by it, this ſhall not be Cauſe to remove the Plea. Contra 8 H. 6. 20.

Br. Conuſans, pl. 27. cites S. C.

12. As if they will not grant the View where the View lies, this is no Cauſe. 8 H. 6. 20.

Br. Conuſans, pl. 27. cites S. C.

13. But if they err voluntarily in ſuch a Thing, of which a Writ of Error lies not, nor can be reformed by it, this ſhall be good Cauſe to remove it. 8 H. 6. 20.

Br. Conuſans, pl. 27. cites S. C.

14. As if they will not record a Default as they ought, or will not give Judgment, this is good Cauſe to remove it, becauſe no Writ of Error lies without Judgment, nor the Error of the Default will not appear of Record to be reformed. 8 H. 6 20.

Br. Conuſans, pl. 27. cites S. C.

15. If Wrong be done to a Tenant or Defendant that goes but in Delay, as it ſeems to be intended, this is no Cauſe of Removal, for he is not at Prejudice, becauſe he hath the Poſſeſſion of the Land. 8 H. 6 20.

* Fol. 497.

16. If Conuſance be granted, and the Bailiff will not read the Writ there, it is good Cauſe of Reſummons. 18 E. 3. 31. b.

Fitzh. Conuſans, pl. 86. cites S. C.

17. In an Action, if the Franchiſe hath Conuſance granted, and in the Franchiſe the Defendant pleads Villeinage in the Plaintiff, this is good Cauſe of a Reſummons, becauſe this cannot be tried there. 26 Ed. 3. 73. b.

18. If the Land be *Frank-Fee*, and the Tenant is *impleaded in Ancient Demeſne*, it is a good Cauſe to remove the Parol to the Common Law, becauſe he *Claims to hold at common Law*, and he *ſhall ſhew*

ſhew his Cauſe at the Day in Bank. Br. Cauſe a Remover, pl. 17. cites 21 E. 3. 32

19. *Demiſe of the Lord of Ancient Demeſne for* Term of *Life by Livery without Deed*, is ſufficient Cauſe to remove the Plea out of Ancient Demeſne to the Common Law by Recordare. Br. Cauſe a Remover, pl. 10. cites 50 E. 3. 24.

20. *So of a Fine* or *Charter* of the Lord, *or Deed* of the Lord, *to hold at Common Law.* Ibid.

21. The Parol removed out of *Court Baron*, becauſe *there were only four Suitors*; therefore quære what Number ſuffices when there are no more. Br. Cauſe a Remover, pl. 35. cites Regiſter fol. 11.

22. Where a Man *recovers Damages in Aſſiſe* of Freſh-Force, and the *Defendant is not ſufficient in the Franchiſe*, this may be removed and executed in another Court. Br. Cauſe a Remover, pl. 54. Br. Recogniſans. pl. 15. cites F. N. B. 243. (B)

23. Where he that claims Conuſance, ſhall not hold Plea of Matters wherein *himſelf is Party*, See Tit. Judges (A) per totum.

(P) Pleading after Removal.

1. **IF a Plea be removed** out of the Lords Court for Cauſe, **the Cauſe is traverſable.** 12 H. 4. 13. b. Br. Cauſe de Remover&c. pl 13. cites

S. C—Fitzh. Cauſe de Remover &c. pl. 7. cites S. C.——*After Reſummons* out of the Franchiſe for failure of the Right, the *Bailiff came and travers'd the Cauſe* and his Challenge was entered upon the Eſſoign which was caſt by the Tenant upon the Reſummons. Br. Conuſans, pl. 66. cites 39 E. 3. 17.

2. In *Præcipe quod reddat*, *Conuſance* of Plea was prayed and *granted to the Franchiſe*, and after the *Tenant ſued Reſummons*, becauſe the Court *failed* him *of Right*, and the *Demandant was eſſoined*, and the *Bailiff* came and ſaid, that he would *traverſe the Cauſe, and pray'd that* (& *ſuper hoc venit*, &c.) *be entered upon the Eſſoin*, and ſo it was, *Dies Datus ultra.* Br. Cauſe a Remover, pl. 20. cites 39 E. 3. 17.

3. In Reſummons, the Bailiffs of N. demanded Conuſance, and the *Demandants ſaid, that at another time they demanded Conuſance and had it, and at the Day failed of Right, becauſe they ſuffered the Tenant to be eſſoined where he had Attorney, and the Tenant demanded the View, and they would not make him a Precept to view, and* alſo *where* there were *two Bailiffs*, who *ought to ſit, the one came and the other not*, and all the Points were ſuffered in Iſſue, and becauſe in a Manner the King is Party, and therefore may affirm the Juriſdiction of the Court the Iſſue was ſuffered upon all, and this upon Reſummons in new Original, as it ſeems, and there the *Tenant* was not compelled *to join with the one or the other*; Contra 34 H. 6. And in this Caſe it was alleged, that the *Demandant* was *nonſuited in the Franchiſe*, and yet the Iſſue was taken ut ſupra. Br. Conuſance, pl. 10. cites 40 E. 3. 11. Br. Double Plea, pl. 119. cites S C Br. Iſſues joines, pl. 4. cites S. C.

4. It Conuſance of Plea be granted to the Bailiff of a Franchiſe, and he fails of Right, it is a good Cauſe to remove the Plea, and *upon the Reſummons this Cauſe ſhall be ſhewn*, and the *Bailiffs may traverſe* the Cauſe, Quod Nota; viz. they may demand Conuſance again, and there the Cauſe ſhall be ſhewn, and the Bailiffs may traverſe it. Br. Cauſe a Remover, pl. 8. cites 34 H. 6. 48.

5. Note, that where Conuſance of Plea was granted, and *Reſummons ſued for failure of Right*, the Bailiffs may demand *Conuſance again*, and then the *Demandant ſhall ſhew how they failed*, &c. the *Bailiffs ſhall traverſe the Cauſe*, and upon this, by the beſt Opinion, the *Tenant ought*

to

to join in this Iſſue with the Demandant or with the Bailiffs, and *if he joins with them, and it is found with the Demandant it is peremptory to the Tenant*; *Contra if he joins to the Demandant*, for there the Demandant can't have Judgment againſt him where the Iſſue is found with himſelf againſt a Stranger, and not againſt the Tenant. Br. Conuſance, pl. 5. cites 34 H. 6. 53.

(Q) Conuſance.
Reſummons.
In what Caſes it lies.

1. AFter Conuſance is granted, if there be good Cauſe after to remove the Plea, **a Reſummons ſhall be ſued in the Court where the Original was commenced.** 8 H. 6. 20. 18 E. 3. 31. b. 1 Ed. 3. 21 b.

2. But when it comes there, if no Cauſe appears, it ſhall be remanded. 1 Ed. 3 21. b.

Br. Reſummons, pl. 9. cites S. C. 3. In *Formedon* the Bailiffs of S. have Conuſance of the Plea, and the *Tenant vouched a Foreigner* in the Franchiſe, the Demandant ſhall have Reſummons; for this *want of Power is failure of Right*, and the Bailiffs ſhall never have the Conuſance again, Quod nota inde bene. Br. Conuſance, pl. 16. cites 11 H. 4. 27.

4. Where a *Bailiff has Conuſance, and he himſelf is Party*, it is a good Cauſe to ſue Reſummons; per Cotton. Br. Conuſance, pl. 27. cites 8 H. 6. 18.

(R) Conuſance.
Remover.
Reſummons.
[What ſhall be Remov'd on the Reſummons.]

S. P. and per. Hank. if he vouches in Franchiſe, and after the Parol is reſummoned

1. **WHEN Conuſance is** granted **to a Franchiſe** out of C. B. **and there is a** foreign Voucher, **and thereupon the Demandant ſues a** Reſummons in Banco **for Failure of Right there,** nothing ſhall come of the Record in Banco but the Original, **and the Party ſhall be at large to plead any Plea.** 11 H. 4. 87. b.

into Bank, there the *Tenant may vouch another.* Br. Reſummons, pl. 21. cites S. C.—Br. Conuſans, pl. 19. cites S. C. and it is ſaid there, that though Reſummons be ſued out of Franchiſe in Bank after Conuſance granted, yet nothing done in the Franchiſe ſhall be of Record in C. B. but only the Original.

2. In Aſſiſe of Mortdanceſtor in Cheſter, the Tenant *vouched Foreigner*, and Record ſent into Bank, and there the Tenant made Default, and therefore the Record remanded to take the Aſſiſe. Br. Cauſe a Remover, pl. 21. cites 8 Aſſ. 22.

3. Where the *Action* is brought *in Bank, and L. has Conuſance of the Plea*, and *failed the Party of Right in their Franchiſe by Foreign Voucher*, Foreign Plea, &c. Reſummons lies to reduce it in Bank; for there it never ſhall be remanded into the Franchiſe; per Hill and Hank. For

Conu-

Conuſance is granted *upon Condition*, Quod *celeris ſiet Juſticia, alioquin redeant.* Br. Certiorari, pl 16. cites 11 H. 4.

4. If Record be removed *out of the County or Franchiſe* into Bank, *nothing ſhall be of Record in Bank but the Original.* Br. Cauſe a Remover, pl. 47. cites 2 H. 7. 5.

5. *But where Record is ſent into a Franchiſe by Conuſance of Plea granted* to them, there all the Record of the Bank ſhall be of the Record in the Franchiſe. Ibid.

For more of Conuſance of Pleas in General, See **Fines** (C) **Judge** (A) **Prohibition, Reſummons, Univerſity,** and other Proper Titles.

Copyhold.

(A) Its Original, and how conſider'd, and of what it conſiſts. And the ſeveral Sorts.

1. COpyhold Tenants *were Tenants in Villeinage.* Br. Tenant per Copy, pl. 25. cites F. N. B. fol. 12. (C)

2. Such cuſtomary Inheritances ſhall not have by the Law *any other collateral Qualities but ſuch as concern the Deſcent of the Inheritance which other Inheritances at Common Law have*; for as without Cuſtom ſuch Eſtate at Will cannot be deſcendible, ſo neither can it have any collateral Quality or Incident to other Inheritances at Common Law; for Copyholders have Eſtates of Inheritances *ſecundum Quid*, viz. to be deſcendible by Cuſtom to their Heirs, and not to be determined by the Deaths, nor ſubject to the Will of the Lord as other Eſtates at Will are, but are *not* Eſtates of Inheritance *ſimpliciter*, viz. to all other collateral Qualities, but ſuch as Cuſtom has allow'd, or are incident to them. 4 Rep. 22. a. Mich. 23 & 24 Eliz. C. B. the 2d Reſolution in Brown's Caſe.

3. Though a Copyholder has not in Judgment of the Law but only an Eſtate at Will, yet Cuſtom has ſo eſtabliſh'd and fix'd his Eſtate, that by the Cuſtom of the Manor it is deſcendible, and his Heirs ſhall inherit it, and ſo *his Eſtate is not merely ad Voluntatem Domini, but* ad Voluntatem Domini *ſecundum Conſuetudinem Manerii*; reſolv'd per tot. Cur. 4 Rep. 21. a. Mich. 23 & 24 Eliz. C. B. in Browne's Caſe.

Gilb. Treat. of Ten. 145. cites S.C. and ſays, the Reaſon of this ſeems to be, becauſe upon Copyhold Eſtates Villein Tenures were uſually reſerved, and thoſe Eſtates were given to Villains; therefore no other Eſtates could be granted to them, but at Will; for otherwiſe they had been infranchiſed, as it ſeems; but to prevent the frequent Ending of theſe Eſtates they granted them in Fee, but yet at the Will of the Lord; and according to my Lord Coke, notwithſtanding ſuch Grant, they were intirely at the Will of the Lord, who ouſted them when he pleaſed, without any Reaſon, which being a very great Inconvenience, it ſeems it was altered by ſome poſitive Law (tho' that does not appear) which preſerved their Eſtates to them, doing their Services, but yet left them as it found them, to have Eſtates only at Will. —— 2 New Abr. 457. in totidem Verbis, without citing it out of Ld. Ch B. Gilbert.

4. Though ſome Tenants by Copy of Court Roll have an Eſtate of Inheritance, yet they *have nothing but at the Will of the Lord according to the Courſe of the Common Law*, for *if the Lord ouſts them they have no other Remedy but to ſue the Lord by Petition.** 3 Rep. 8. a. Paſch. 26 Eliz. in Scacc'. Heydon's Caſe.

* So if an *errone.us Judgment* be given *againſt a Copyholder*, he cannot have a Writ of falſe Judgment, but muſt ſue to the Lord by Petition to reverſe the Judgment; per Cur. 4 Rep 21. b. Mich. 24 & 25 Eliz. C. B. cites 13 R. 2. Tit. Falſe Judgment, 7.

5. A Copyhold *conſiſts of ſix principal Grounds* or Circumſtances, 1ſt, There muſt be a *Manor* for the Maintenance of Copyhold. 2dly, A *Cuſtom* for the allowing of the ſame. 3dly, There muſt be *a Court holden* for the Proof of the Copyholders. 4thly, *A Lord* to give the Copyhold. 5thly, *A Tenant* of Capacity to take the Tenement. 6thly, The *Thing to be granted* which muſt be ſuch as is grantable, and may be held of the Lord according to the Tenure. Calth. Reading. 2, 3.

6. It appears by a certain Book intitled, De priſcis Anglorum legibus, tranſlated out of the Saxon Tongue by Maſter Lambert of Lincoln's-Inn, that Copyholds were *long before the Conqueſt*, and then *called by the Name of Book-land* as you may ſee in the beginning of the Book, in the Treatiſe de Rerum & Verborum explicatione; and by Maſter Bracton, an ancient Writer of the Laws of England, who in his Book writeth divers Precedents and Records of H. 3. of Allowance that Copyholders of cuſtomary Tenants doing their due Services, the Lord might not expel them according to the Opinion of latter Judges in the Time of E. 3. & E. 4. And it appears by Maſter Fitzherbert's Abridgment, they were preſerved by a ſpecial Writ for that Purpoſe, and the Lord thereby compelled to do right. And in the Time of H. 4. *Tenants by the Virge*, which are the ſame in Nature as Copyholders be, were allowed *by the Name of Sokemaines* in Franktenure, and in the Time of H. 7. were allowed Aid of the King for Defence of their Eſtates. Calth. Reading, 3, 4.

7. There is no Copyhold Land but *at firſt was Demeſne Land*; per Ley Ch. J. 2 Roll Rep. 236. Mich. 20 Jac. B. R.

8. There are three manner of Copyhold Lands beſides the two Sorts of *old After and new After*; After ſignifies an Hoſt, Chimney, or a Flew. Now thoſe Copyhold Lands which had long Time uſually a Houſe on them, they were called old After Lands, but thoſe which but of late had Houſes built on them were called new Afters, from the Houſe newly erected on them; and in old Records the Baſtard eigne did plead, that he was Filius Askarius, as much as to ſay, born in the Houſe, or in the ſame Family; and ſo are the ancient Records which he had ſeen, and ſo Britton calleth him; beſides theſe, he ſaid, there are three kinds of Copyholds which he had known in his Practice. 1. *Terra Nativa*, and this was alſo called *Bond-Lands*, becauſe held by Villains. 2. *Cuſtomary*, and this was held by free Tenants. 3. *Menſalis*, and called alſo *Dominica*, beſides by this the Lord's Table is maintain'd; per Ley Ch. J. And per Richardſon, ſome Copyhold Land is called *Poad-Land* and ſome *Molland*, a Molli Redditu, from the little Rent reſerved. 2 Roll Rep. 236. Mich. 20 Jac. B. R. in Caſe of Smith v. Reynard.

9. Copyhold is nothing but *a Tenancy at Will* in the Eye of the Law. 3 Lev. 94. Mich. 34 Car. 2. C. B.

10. Copyhold Lands are *not holden of* the Manor, *but are Parcel of the Manor itſelf*, which conſiſts of Demeſnes and Services; Arg' and of this Opiuion were Treby Ch. J. and Nevil, and Rooksby Juſtices, but Powell J. contra; for one ſays in common Speech, that Copyhold Lands are held of the Manor. Ld. Raym. Rep. 44. Paſch. 7 W. 3. C. B. in Caſe of Brittle v. Bade.

11. Co-

11. Copyholds, though now ſupported by Cuſtom, *were at firſt eſtabliſhed by Act of Parliament*, as all other Parts of the Common Law were till the Records of them came to be loſt; per Lord Macclesfield. Chan. Prec. 574. Trin. 1721. in Caſe of Sir H. Peachy v. D. of Somerſet.

(B) What is, or may paſs, as Copyhold; and by what Words.

1. AS to the Cuſtom that certain Tenants within the ſame Manor, have uſed to have Lands, &c. to them and their Heirs in Fee-Simple, and Fee-Tail, or for Life at the Will of the Lord, there muſt be *three Supporters*, the 1ſt. is *Time*, and that muſt be out of Memory of Man, which is included in the Word Cuſtom, ſo as Copyhold cannot begin at this Day. The 2d is, *that the Tenements be Parcel of the Manor, or within the Manor.* The 3d, *that it has been demis'd and demiſable by Copy of Court Roll*, for it need not be demis'd Time out of Mind by Copy of Court, but if it be demiſable 'tis ſufficient. Co. Litt. 58. 6.

2. And 1ſt. a *Manor may be granted by Copy.* 2dly, *Underwoods* without the Soil, ſo the *Herbage or Veſture* of Land. 3dly, Generally all Lands and Tenements within the Manor, and *whatſoever concerneth Lands or Tenements, as a Fair appendant* to a Manor may be granted by Copy, &c. Co. Litt. 58. b.

3. The Opinion of Bracton and Fleta, both conſenting in one, that Copyhold Lands is *Parcel of the Lords Demeſne*, wants not modern Authority to ſecond it; for 15 Eliz. in the Exchequer, Coke ſays he finds it adjudged *in the Caſe of a Common Perſon, howſoever it is otherwiſe in the King's Caſe*, That if the Lord of a Manor grants away omnes terras ſuas Dominicales, the Copyholds Parcel of the Manor, paſs by theſe general Words. Neither doth this want Reaſon to confirm it; for *in the time H. 3. and E. 2.* when Bracton and Fleta lived, *Copyholders were accounted mere Tenants at Will*, and therefore after a ſort their Lands were reputed to continue ſtill in their Lords Hands; And now tho' Cuſtom hath afforded them a ſurer Foundation to build upon, yet the Franktenement at the Common Law reſting in the Lord, it can be no ſtrange thing to place the Lands under the Rank of the Lord's Demeſnes. But Lord Coke ſays, to deliver his Mind more freely in this Point, he thinks that howſoever, according to the ſtrict Rules of Law, theſe Copyholds are Parcel of the Lords Demeſnes, yet in Propriety of Speech (if Propriety can be in Impropriety) they are the *more aptly called the Copyholders Demeſnes*; for tho' the Franktenement be in the Lord by the Common Law, yet by the Cuſtom the Inheritance abideth in the Copyholders; and it is not denied, if a Copyholder be impleaded in making Title to his Copyhold, he may juſtly plead, Quod eſt ſeiſitus in Dominico ſuo, with this Addition, Secundum conſuetud' Manerii. Therefore Lord Coke ſays, he concludes, that howſoever the Common Law valueth the Title of the Copyholder, yet he has ſuch an Intereſt confirmed unto him by Cuſtom, that the Lord having no Power to reſume his Lands at Pleaſure, they are (tho' improperly) call'd (yet perhaps truly accounted) the Lords Demeſnes, and that in the Eye of the World; howſoever it be in the Eye of the Law, that thoſe Lands alone can properly challenge the Name of the Lords Demeſnes (if any Lands in the Poſſeſſion of inferior

* S. P. by Chamberlain, that in the King's Caſe it will not paſs the Copyhold Land with the other Demeſnes; But Hitcham ſaid, that in the Caſe of a common Perſon, it will not paſs the Copyhold Land if he has other Demeſnes to ſupply the Words of the Grant. 2 Roll Rep. 236. Mich. 20 Jac. B. R. in Caſe of Smith v. Reynard. —— It is ſaid in Lex Cuſt 92. to be adjudged, that if a *Man grants all his demeſne Lands*, his

Copyhold Lands will not paſs, if he has other Lands to ſatisfy the Words of his Grant. It ſeems this muſt be underſtood of thoſe Lands

rior Lords may properly challenge that Name) which the Lord reſerveth in his own Lands, for Maintenance of his own Board or Table, be it his waſte Ground, his arable Ground, his paſture Ground, or his Meadow; be it is his Copyhold which he hath by Eſcheat, by Forfeiture, or by Purchaſe; or be it any Part of his Freehold, of which my Lord Coke ſays, he muſt ſpeak a Word by the way not to prove that it is Demeſne, for Manifeſta probatione non indigent, but to ſhew you in what Senſe it is taken, and how far it extends. Co Comp. Cop. 32. S. 14.

that he holds by Copy, or elſe it thwarts the Caſe before; and the Reaſon is, becauſe Copyhold Lands do not paſs by ſuch Conveyance, but by Surrender. If *Copyhold Land eſcheat, and are in the King's Hands, and he grants omnes Terras ſuas Dominicales*, quære if they ſhall paſs. It ſeems every Thing demiſable by Copy muſt be Parcel of the Manor; for the Cuſtom can only extend to the Manor, and the Pleading is quod infra Manerium, &c. Gilb. Treat. of Ten. 295.

4. A Cuſtom to make a Copyhold muſt be of Neceſſity in the ſame Manor where the ſaid Copyholds are ſo granted, viz. that the ſame *are, and have been Time out of Mind only demiſed, and demiſeable by Copy of Court Roll*; for otherwiſe the Lord cannot grant it by Copy, becauſe he cannot begin a Cuſtom at this Day. *But if* it have been *by like Time granted by Copy, tho' ſince it came to the Lords Hands*, yet *if the Lord never Demiſes the ſame by free Deed or otherwiſe, but by Copy*, then *he may well grant again the ſame by Copy*, for it is neither the Perſon of the Lord nor the Occupation of the Land, that either makes or deſtroys the Copyhold, but only the Uſage and Manner of demiſing the ſame; for the Preſcription of a Copholder conſiſts neither in the Land nor in the Occupier, but only in the Uſage. Calth. Reading, 16.

5. If Lands have been *demiſed by Copy by the Space of* 60 *Years*, and yet there be *ſome alive that remember the ſame occupied by Indenture*, this is not a good Copyhold. Calth. Reading, 19.

6. *And if* Lands have been *demiſed by Copy but* 40 *Years*, and there is *none alive that can remember the ſame to be otherwiſe demiſed*, this is a good Copyhold, for the Number of Years makes not the Matter, but the Memory of Man. And it is not 60, 80, or 100 Yeats, that makes a Copyhold or a Cuſtom, tho' it makes a Limitation. But ſuch certain Number of Years makes only a Likelihood, or Preſumption of a Preſcription; that is, that it commonly happens not that any Man's Memory alive can remember alone ſuch a Number of Years, but if any chance to be alive that remembers the contrary, then ſuch Preſcription muſt give Place to ſuch Proof. Calth. Reading, 19.

7. *Lord of a Manor* ſeiſed of Land which was Ancient Copyhold, *Leaſes it for* 500 *Years*, and 3 Years after *grants it by Copy* to another, who was admitted for Lives, and paid his Fine. S. purchaſes the Manor, and got the Leaſe aſſigned in Truſt for him (tho' he knew how the Matter was at his Time of Purchaſe) and the Copyholder had ſeveral Years enjoyed the Land quietly as Copyhold. Decreed that the Tenant by Copy ſhall hold according to his Grant. N. Ch. R. 26. 10 Car. 1. Hutchings v. Strode.

So Land which had been *enjoyed* 60 *Years as Copyhold* was allowed. Toth. 160. cites 21 El. Wrayford v. Carew. ---

8. Copyhold Lands *enjoyed as Freehold for* 60 *Years* and more, and had paſſed by Deed and Fine as Freehold Lands, yet being preſented by the Homage as *forfeited*, being ſold as Freehold by *Fine* at Common Law, whereby the Lord of the Manor granted over to other Perſons and their Heirs, tho' it was the Ignorance of the Copyholder, from the long Enjoyment of an Anceſtor, and his and the Court Rolls being loſt or miſlaid, a Commiſſion was decreed to ſet out Boundaries to diſtinguiſh the Copyhold Lands from the Freehold of other Perſons.

ſons. Fin. R. 462. Mich. 32 Car. 2. Wintle and Waſhborn, & al' v. Carpenter and Pisburgh.

So for 50 *Years* was allowed till recover'd at Law. Toth. 106. cites Trin. 27 Eliz. Baſpool v. Roberts. ——Toth. 107. cites 22 and 23 Eliz 1 Freeman v. Penny.

So where Lands had gone 5 *Years* as Copyhold of Inheritance it was allowed. Toth. 106, 107.

9. Whatever may *paſs by Deed without Surrender* (tho' it be required that the Deed be inrolled in the Lords Court) can be no Copyhold, and whatever may paſs by *Surrender* in the Lords Court, Secundum Conſuetudinem Manerii (but *Non Secundum Voluntatem Domini)* is no Copyhold; per Cur. Cumb. 387. Mich. 8 W. 3. B. R. Smith v. Page. 3 Salk. 100. pl. 2. S. C. in totidem Verbis.

10. Lands Time out of Mind paſſed by *Surrender, and Copy of Court Roll and the* Grant was always *tenend' ſecundum Conſuetud' Manerii*, but never had the Words Ad voluntatem Domini. Reſolved that they are not Copyhold but a *Cuſtomary Freehold*. Carth. 432. Mich. 9 W. 3. B. R. Gale v. Noble. 2. Vent. 143. S. P. in Caſe of Rogers v. Bradley.

11. Where a *Cuſtom* is *that all Lands held of that Manor ſhall paſs by Surrender and Admittance*, yet *the Lands may be Freehold, and the Manner of Conveyance is cuſtomary*, in as much as Livery is not requiſite, Holt ſaid the Freeholds themſelves can never be Parcel of the Manor, but 'tis Service; Quære. 11 Mod. 53. pl. 28. Paſch. 4 Ann. B. R. Anon.

(C) In what Reſpect Copyholds partake of the Nature of Freeholds.

1. THOUGH Copyhold Land be governed by the Rules of the Common Law coucerning Deſcents, yet it partakes not of the Nature of Freehold Land in other Reſpects; for it is not *Aſſets in the Heir's Hands, neither ſhall a Woman be endowed, Husband Tenant by Curteſy, unleſs by ſpecial Cuſtom; neither ſhall a Deſcent toll an Entry.* The Reaſon ſeems to be, becauſe the Eſtates of Copyholders were at firſt only Eſtates at Will, and at the abſolute Diſpoſition of the Land, and there hath not ſince been any Proviſion for thoſe particular Caſes; for my Lord Coke ſays, that *Copyholders have only a Fee-ſimple ſecundum quid*; that though they are Tenants at Will, yet their Eſtates ſhall deſcend to their Heirs, and not to be determined by their Death, and not to be ſubject to the Will of the Lord as other Eſtates at Will are, (which it ſeems was introduced in favour of them by ſome poſitive Law, though no Footſteps of it appear now) *but not ſimpliciter* to have all the collateral Qualities of Eſtates in Fee-ſimple at Common Law, in which Reſpects that poſitive Law ſeems to have left them at large as before. Gilb. Treat. of Ten. 149, 150. 2. New Abr. Tit. Copyhold (B) 458. S. P. in totidem Verbis, but without citing Ld. Ch. B. Gilbert

(D) How it differs from a cuſtomary Freehold.

1. THE great Difference between Copyholds and cuſtomary Freeholds *which paſs by Surrender* is, that the *Copyholder is in by the Demiſe of the Lord; but in* the Caſe of *cuſtomary Freeholds*, the Lord

is only an Inſtrument, and that *in pleading a Title to a Copyhold* Eſtate, *it is ſufficient to ſhew a Grant from the Lord; but in cuſtomary Freeholds the Eſtate of the Surrenderor muſt be ſhewn*, as that the Surrenderor was ſeized in Fee, and ſurrendered to the Lord, and he granted &c. per Holt Ch. J. 1 Salk. 365. pl. 4. Hill. 4 Ann. B. R. Crowther v. Oldfield.

[E] Of *what Things* it may be.

This in Roll is Letter (A) Fol. 498.

1. TYTHES may be demiſable by Copy of Court-Roll, according to the Cuſtom of the Manor, for they may be Parcel of a Manor. (as it ſeems) as well as a Rent-Charge. Contra. P. 43 Eliz. B. R. between *Sands and Drury*.

Cro. E. 814. pl. 3. S C. Popham held, that they were not grantable by Copy, becauſe a Manor and Tithes are of ſeveral Natures, and ſo impoſſible that that which is not Parcel of the Manor can be demiſed ſecundum Conſuetudinem Manerii. But Gawdy J. doubted thereof, and conceived it had been well enough if it had been ſo uſed Time out of Mind. —— Supplement to Co. Comp. Cop 82. S. 17. cites S. C. and ſays it was objected, that Tithes were not grantable by Copy, becauſe it is againſt the Nature of Tithes, and none could have a Property in them before the Council of Lateran, and therefore it was impoſſible to have any Cuſtom ſo to grant them. But it was reſolved, that they might be granted by Copy, if there had been a Cuſtom Time out of Mind ſo to grant them. ——Gilb. Treat. of Ten. 313 cites S. C. but makes a Quære. —— Mo. 355. pl. 480. per Cur. in the Caſe of Hoe v Taylor, Tithes may be ſurrendered by Copy if the Cuſtom permits it. —— Cro. E. 413. pl. 3. in Caſe of Hoe v. Taylor, it was ſaid to be adjudged in Sir John Bourne's Caſe, that a Grant of Tythes by Copy was good.

2. Tonſura prati may be demiſable by Copy of Court-Roll, according to the Cuſtom of a Manor, by Preſcription. P. 43 Eliz. B. R. per Gawdye.

The Lord by Copy granted to A. and his Heirs *Underwood in M. Wood Annuatim ſuccidend'* by 4 or 5 Acres at leaſt, adjudged a good Grant, and is excluſive of the Lord; and note, they took the Wood Annuatim ſuccidend' by 4 or 5 Acres, to be the Order appointed for cutting, and not to go in Reſtraint of the Grant. Mo. 355. pl. 480. Paſch. 36 Eliz. B. R. Hoe v. Taylor.—4 Rep. 30 b. 31. a. pl. 23. S. C. adjudged, that it may by Cuſtom be demiſable by Copy; and Judgment affirm'd; For it is a Thing of Perpetuity to which Cuſtom may extend, becauſe after every Cutting it will grow again Ex ſtipitibus. —— Cro. Eliz 413. pl. 3. S. C. adjudged, and affirm'd in Error. —— Jenk. 274. pl. 95. S. C. accordingly.—— Supplement to Co. Comp. Cop. 82. S. 17. cites S. C. —— Gilb. Treat. of Ten. 208. cites 4 Rep. 31. S. P.——Ibid. 314. S. P.

3. Underwood, without the Soil, may be demiſable by Copy. Co Lit. 58. b.

—— 4 Rep. 31. a. in Caſe of Hoe againſt Taylor, S. P. reſolv'd. —— Jenk. 274. pl. 95. S. C. & S. P.—— Co. Comp. Cop. 54. S. 42. S. P. and cites S. C.

4. The Herbage or Veſture of Land may be demiſable by Copy. Co. Lit. 58. b.

A *Cuſtomary Manor may* be granted by Copy, tho' ſuch Lord *cannot hold a Court* Baron *to have Forfeitures*, and hold Plea in a Writ of Right. Cro. J. 259. pl. 20. Mich. 8 Jac. B. R. King v. Stanton.—Jenk. 274. pl. 95. S. P.—And ſuch Manor may have *cuſtomery Tenants*, for as well as there may be a Tenant at Will of a Manor at Common Law, ſo there may be Tenant at Will according to the Cuſtom of the Manor; Reſolv'd. Cro. J. 327. pl. 4. Mich. 11 Jac. B. R. Moore v. Goodgame.——Bulſt. 135. Goodgroom v. Moore. S. C. but S. P. does not fully appear.——11 Rep. 17. a. Mich. 10 Jac. Nevil's Caſe, S. C. reſolv'd clearly, per tot. Cur. that a cuſtomary Manor may be held by Copy, and ſuch cuſtomary Lord may hold Courts, and grant Copies, and ſuch cuſtomary Manor will paſs by Surrender, and Admittance, and Fines ſhall be paid upon Admittance, as well upon Alienation as upon Decent, and that may be cuſtomary Lord Meſne, and Cuſtomary Tenants in Caſe where the Meſnalty is a Tenancy at Will, according to the Cuſtom of the Manor, as where there is Tenancy at Will at the Common Law of a Manor; and if ſuch cuſtomary Manor be forfeited, the Lord ſhall have the Cuſtoms and Services is appertaining thereto.——Yelv. 190. Mich. 8 Jac. B R. The King v. Staverton, S. P. And it ſaid, that ſuch a Cuſtomary Manor cannot hold a Court Baron; For he cannot have any Frank-

5. A Manor may be demiſable by Copy. Co. Lit. 58. b.

tenants

tenants to hold of him, becauſe a Copyhold Manor is not capable of an Eſcheat of Freehold, for that which comes in lieu of another ought to be of the ſame Nature, and ſo the Freehold eſcheated ſhould be Copyhold which is repugnant and impoſſible.—Bulſt. 57. 58. S. C. all the Court agreed clearly againſt the Court Baron.——Supplement to Co. Comp. Cop. 79. S. 15.——Gilb. Treat. of Ten. 201. 202. cites ſame Caſes, and ſays that a cuſtomary Manor may be held by Copy of Court-Roll, ad voluntat' &c. and ſuch a Lord may grant Copies; but it ſeems it muſt be of ſuch Things as have been uſually demiſed by him; for it ſeems he cannot grant all his Demeſnes by Copy, without they have been uſually demis'd; For tho' they have been demiſed Time out of Mind by the ſuperior Lord by Copy, that will not warrant his Demiſe by Copy, becauſe the Cuſtom muſt be, that Time out of Mind they have been granted per Dominum Manerii, now they have not been granted by him that is Lord of the Manor, tho' they have by the ſuperior Lord. This Caſe ſeems to prove, that a cuſtomary Manor to hold Courts &c. may be without any Freehold Services, and it may as well be objected againſt ſuch a Lord's holding Courts, that he hath no Manor, becauſe no Freehold Services, but it ſeems he may have Freehold Services.

6. Any thing that concerns Land, **may be granted by Copy. Co. Lit. 58. b.** Generally all Lands and Tenements within the Manor, and whatever concerns Lands and Tenements may be granted by Copy. Co. Litt. 58. b. —— Any Profit of any Parcel of the Manor may by Cuſtom be granted by Copy; Reſolv'd. 4 Rep. 31. a. in Caſe of Hoe v. Taylor. ——— Jenk. 274. pl. 95. S. C. & S. P. —— Gilb Treat. of Ten. 314. cites S. P. out of Ld. Coke, but ſays, that this muſt be meant where they are Parcel of the Manor, and not to extend to incorporeal Things in groſs; for they are no Parcel of the Manor.

It ſeems by Littleton, that *only Lands and Tenements* are demiſable by Copy, and therefore if the Lord of a Manor will grant *Rent charge*, or the *Office of Stewardſhip, or Bailiwick of his Manor* by Copy, or a *Common groſs* by Copy, theſe be not good Grants, becauſe they lie not in Tenure, and alſo becauſe the Cuſtom does not extend unto them, but *Common appendant* to a Tenement, or Copyhold Lands, may be demiſed with the Tenement by Copy. Calth. Reading, 54.

7. *Market*, *Fair*, and *Piſcary*, may be granted by Copy. Mo. 355. pl. 480. Paſch. 36 Eliz. in Caſe of Hoe v. Taylor. Cro. C. 413. pl. 5. in S. C. Fenner ſaid, he knew a Market within the Manor of Crookehorne, in the County of Somerſet, to be demiſed by Copy.——4 Rep. 31. a. in pl. 23. S. C. and the ſame Inſtance given. —— Jenk. 274. pl. 95. S. P.——Suppliment to Co. Comp. Cop. 82. S. 17. cites S. C.——Co. Litt. 58. b.

8. *Any Profit Parcel of a Manor*, may by Cuſtom be granted by Copy; reſolv'd. 4 Rep. 31. a. pl. 23. Paſch. 37 Eliz. B. R. in Caſe of Hoe v. Taylor.

9. *Common* and *prima Veſtura Prati* may be granted by Copy, becauſe they are Parcel of the Manor, but what is not *Parcel of the Manor* cannot poſſibly be demiſed ſecundum Conſuetudinem Manerii; per Popham Ch. J. and therefore he held, that *Tythes* could not, which was the principal Point; but becauſe upon the Verdict it did not appear that it had been *granted by Copy Time out of Mind*, it was held, that no Title was found for the Defendant who claimed the Tythes by Copy of Court-Roll, and therefore 'twas adjudged for the Parſon, Plaintiff. Cro. E. 814. pl. 3. Paſch. 43 Eliz. B. R. Sands v. Drury.

10. Things that lie not in Tenure are not granted by Copy, as *Rents*, *Bailiwicks*, *Stewardſhips*, *Common in Groſs*, *Advowſons in Groſs*, and ſuch like; but an *Advowſon appendant*, a *Common appendant*, or a *Fair appendant*, may paſs by Copy, by reaſon of the principal Thing to which they are appendant, and generally what Things ſoever are Parcel of the Manor, and are of Perpetuity, may be granted by Copy, according to the Cuſtom. Co. Comp. Cop. 54. S. 42. Gilb. Treat. of Ten. 313. cites S. C. & S. P For firſt no Rent can be reſerv'd out of them, becauſe there can be no Diſtreſs taken upon them, and then they are not Parcel of a Manor which conſiſts only of Demeſnes and Services; But then it will be objected, that a Rent Service is Parcel of a Mannor, and grantable by Copy, for a Manor may be granted by Copy, but a Rent-Service may be diſtrained for; and if it be granted by Copy, it cannot be granted alone, but Lands muſt be granted with it, upon which a Diſtreſs may be taken; and as it is Part of a Manor, it is held of ſome ſuperior Lord; But it ſeems a Rent-Service alone cannot be granted by Copy, no more than Rent-Charges, or Commons in groſs, which yet may be granted by Copy, as they are appendant to ~~any~~ other Thing. No Service can be reſerved or due upon the Grant of incorporeal Things, ſo that no Court can be kept by the Grantor, no Attendance being due from the Grantees of incorporeal Inheritances; ſo as to them there

there is no Lord, and conſequently they cannot paſs by Surrender and Admittance, and ſo are not grantable by Copy.

11. *Demeſne Lands* which *within Time of Memory* have been *occupied by the Lord himſelf, or his Farmor*, is not good to be granted by Copy, becauſe of the Newneſs of the Grant, *yet by Continuance* of Time it may be good Copyhold, when the Memory of the contrary is worn away, as hath been ſaid before; neither can the Lord that granted ſuch a Copy, put out his Copyholder during his Life that granted the ſame, becauſe he ſhould not be received to diſable his own Grant. Calth. Reading 54, 55.

12. If a *Copyholder ſurrenders his Copyhold into the Lord's Hands merely to the Uſe of the Lord*, Calthorpe doubts whether the Lord may grant this again by Copy, as he may where it comes unto him by Forfeiture, or by Eſcheat, becauſe it is made Parcel in Demeſne by his own Acceptance, and not by the Act of the Law; Quære. Calth. Read. 55.

13. A *Copyhold may be of* a *Mill*; adjudged. 4. Le. 241. pl. 393. Paſch. 8 Jac. B. R. Ward's Caſe. And cites it adjudged in Caſe of Green v. Harris.

14. A *Leaſe of the Freehold by a Copyhold to a Stranger* is good between the Lord and the Stranger; per Cur. Keb. 15. pl. 43. Paſch. 13 Car. 2. B. R. Garrard v. Liſter.

15. Grant of *Waſte* by Copy is void, unleſs ſo granted Time out of Mind. 3 Keb. 124. Hill. 24 Car. 2. B. R. Biſhop of London v. Row.

16. A Lord of a Manor may make *new Grants of Part of the Manor* to hold by Copy; admitted, and a Caſe was cited to the Purpoſe. But Lord Chancellor ſaid, that in the Caſe cited ſuch Grants were made *with Conſent of the Homage*, that the Queſtion in the Principal Caſe is, whether there be a Cuſtom to do it without the Homage, and that muſt go to Law, and then it will be conſidered by them, how far a Cuſtom to make ſuch Grants without the Homage, be a good Cuſtom. Sel. Chan. Caſes in Lord King's Time, 62. Mich. 12 Geo. 1. Hughes v. Games.

(F) Grant. What ſhall be ſaid to paſs by the Grant. Things excepted, or reſerv'd.

1. IF the *Lord* of a Manor *grants his Manor for Years, except Boſc. and Subboſc.* growing in certain Copyhold Ground, and the Leſſees by his Steward granteth a Copyhold, within which Mannor there is a *Cuſtom, that every Copyholder may take within his Copyhold, Woods and Underwoods growing upon the Ground for neceſſary Fuel*; notwithſtanding this Exception in the Leaſe of the Manor, the Copyholder may cut down the Woods or Underwoods according to the Cuſtom, for though the Leſſee of the Manor in reſpect of the Exception could not meddle with the Woods or Underwoods, yet the Copyholder may, for his Title is grounded upon the Cuſtom paramount the Exception. Co. Comp. Cop. 54. S. 42.

2. If a Copyhold be *granted to a Man & Hæredibus, an Eſtate Tail does not paſs for want of the Words de Corpore*; and if a Copyhold be granted to a Man & *Liberis aut Pueris ſuis de Corpore*, an Eſtate Tail does not paſs for want of this Word Heirs; for what Eſtates ſoever are Intails ſince the Statute De donis Conditionalibus, were Fee-ſimples conditional before the Statute, without the Word Heirs, and therefore no

no Intail ſince the Statute; and for the ſame Reaſon, if a Copyhold be granted *to a Man, and to the Iſſues Males of his Body*, an Eſtate for Life only paſſes. Co. Comp. Cop. 59. S. 49.

3. If a Copyhold be *granted* to a Man *without expreſſing any certain Eſtate*, by Implication of Law an Eſtate for Life only paſſes. Co. Comp. Cop. 59. S. 49.

4. And if I *grant* a Copyhold *to* 3 *habendum ſucceſſive*, they are *Jointenants*, unleſs by ſpecial Cuſtom the Word Succeſſive makes their Eſtates ſeveral. Co. Comp. Cop. 59. S. 49.

5. If the *King by his Steward grants* a Copyhold *to a Man and his Heirs Males, or Heirs Female*, no Fee-ſimple paſſes, becauſe the Lord never intended to paſs ſuch an Eſtate. Co. Comp. Cop. 59. S. 49.

6. If a Copyhold be granted *to an Abbot, and his Heirs*, an Eſtate for Life only paſſes. Co. Comp. Cop. 59. S. 49.

7. If a Copyhold be *granted to a Man and to his Heirs, as long as J. S. ſhall live*, this is only an Eſtate pur auter vie, and a Render limited upon this Eſtate is good. Co. Comp Cop. 59. S. 49.

8. *But* if a Copyhold be granted to a Man and to his Heirs, *as long as ſuch a Tree ſhall grow* in ſuch a Ground, this is a good Fee, and a Render limited upon it is void. Co. Comp. Cop 59. S. 49.

9. If a Copyhold be granted *to J. S. and J. N. & Hæredibus*, they are Jointenants for Life, and no Inheritance paſſes unto either, becauſe of the Uncertainty, for *want of the Word ſuis; but* if a Copyhold be granted *to J. S. only & Hæredibus*, a good Fee-ſimple paſſes without the Word ſuis. Co. Comp. Cop. 59 S. 49.

10. If the Lord makes a *Leaſe for Years of the Manor (excepting all Woods and Underwoods)* and the Leſſee makes Grants by Copy according to the Cuſtom, the *Copyholder ſhall have Wood in theſe Woods according to the Cuſtom.* 8 Rep. 107. Mich. 6 Jac. B. R. Bonham's Caſe.

11. A Copyhold was of Lands in Fee; the Lord by the Cuſtom had, as a Profit apprender, the *Cut of the Woods and Underwoods* growing on the Copyhold. The *Lord grants* all the Woods and Underwoods growing, and which *afterwards ſhould grow* on the ſaid Copyhold Lands *to A.* and *his Heirs*, whether this ſhould not *merge* in the Copyhold, being, as was ſaid, only a Profit apprender. The Queſtion was, If a Copyholder pays a Rent to the Lord, and the *Lord grants, or releaſes* this *Rent to his Tenant*, this ſhall merge in the Copyhold? Sed non allocatur. Vern. R. 21, 22. pl. 14. Mich. 1681. Faulkner v. Faulkner.

[G] Copyhold.

Grant.

By whom it may be made. [By Domini pro Tempore or not, or Perſons not having lawful Titles.]

* This in Roll is Letter (C) Fol. 499

1. **THE Lord that hath a lawfull Eſtate in the Manor, be he** Tenant for Life or Years, **Tenant** by Statute-Merchant, Staple, Elegit, **Tenant** at will, **or Guardian in Chivalry, may grant Copies according to Cuſtom. Co. Lit. 58. b.**

Leſſee for Years granted the Land for 3 Lives, and held good; For *the Cuſtom throughout England is, that the Lord for the Time being may demiſe* by Copy, &c. And this notwithſtanding that he has only Durante Bene—Placito, or at Will; Quod Nota. Br. Tenant by Copy &c. pl. 27. cites 4 Ma 1.—*But* it was held, that ſuch Leſſee of the Manor cannot demiſe, reſerving a leſs than the ancient Rent, but *muſt reſerve the ancient Rent or more.* Br. Ibid. cites 5 Ma.

5 Ma. 1. ——S. P resolv'd, 4 Rep. 23. b. pl. 7. Trin. 26 Eliz. B. R. in Case of Clarke v. Pennyfeather.—— Gilb. Treat. of Ten. 183. cites S. C. accordingly, *provided the ancient Rents, Customs, and Services be reserved*; for if the Estate a Copyholder hath in Lands be an Estate that hath been demised, and demiseable Time out of Mind by Copy by the Lord, it is sufficient to support his Estate by Custom, so that no Estate is required to be in the Lord, but only that the Copyhold Lands should be demised, and demiseable Time out of Mind by the Lord for the Time being, so that be he but Lord it is enough; so that the Custom, which warrants these Estates, only requires that they should have been demised, and demiseable by the Lord for the Time being, but it requires no Estate to be in that Lord in particular, so that he be but Lord, and Custom is the Life and Soul of a Copyholder's Estate, for the Copyholder doth not derive his Estate out of the Lord's Estate (for then it would determine with his Estate) but from the Custom which only requires a lawful Lord for the Time being, and therefore no Regard is had to the Person of the Lord —And if Copyhold *escheats*, or comes into the Hands during their Time, any of them may regrant it at the Will, rendring the ancient Rent, Customs, and Services, and the Lord, who has Inheritance, shall be bound thereby. 4 Rep. 23. b. S. C.

If Tenant pur auter Vie after the Death of Cesty que Vie of a Manor continues in the Manor, and holds Courts, and makes volutary Grants by the Copy, these shall not bind the Lessor; For he was Tenant at Sufferance without any lawful Interest; and Writ of Entry, ad Terminum qui præteriit lies against him, and so he is a Deforceor of the Manor. 4 Rep. 24. a. b. pl. 9. Pasch 29 Eliz. S. C. —— Mo. 236, pl. 369. S. C adjudg'd; so when the Heir grants a Copyhold, and afterwards assigns Dower, the Feme shall avoid the Copyhold ——2 Le 45 pl 59. S. C. adjudg'd, Nisi.——Ow 27. Rouse's Case S. C. adjudg'd Nisi.——S. P. per Cur Obiter. Mo. 112. in pl. 252.——S. P. in a Nota by the Reporter. 1 Rep. 140. b. at the End of Chudleigh's Case.——S. P. agreed Poph 71.——S P. Bridgm. 51.——If a Man seised of a Manor in which are divers Copyholds demiseable for Lives is disseised, and the Disseisor grants a Copyhold, being void, for 3 Lives, this is not good to bind the Disseised; *otherwise it is of a Copyhold of Inheritance*, because it is necessary to admit the next Heir. Calth. Reading, 49.

2. **But** Disseisors, Abators, Intrudors, Tenants at Sufferance, **cannot grant Copies to bind those that have Right. Co. Lit. 58. b. Co. 4. between** *Rouse and Arters*. **B. R. 24. adjudged in the Case of a Tenant at Sufferance.**

Cro. E. 661. pl. 10. Gay v. Kay S. C. & S. P. held accordingly by Popham and Clinch; and Popham said, that it is now without Question held to be good, tho' not executed in the Life of the particular Tenant, who granted, although it was doubted in the E. of Arundel's Case D. 343. Trin. 17. Eliz.——But if a Feme be endow'd of several Copyhold Tenements, she cannot grant Part of them by Copy in Possession or Reversion; for one, who has a particular Estate in a Manor, cannot grant a Copyhold by Parcels, or demise Part, and retain the Residue himself; per Popham. Cro. 662. pl. 10. in Case of Gay v. Kay.

3. **If** Tenant in Dower **of a Copyhold Manor** grants a Copyhold in Reversion **to another,** where by the Custom it may be granted in Reversion, **this Grant shall bind the Heir after the Death of the Feme, tho' the Reversion be** not executed in the Life of Tenant in Dower; **For this is all one with a Grant in Possession, the Custom warranting an Estate in Reversion. P. 41 Eliz. B. R. between** *Gaye and Reye.*

Guardian in Socage held a Court in his own Name, and granted Copies in Reversion, and held good against the Heir. Ow. 115. 1 Jac. C. B. Shopland v. Radlen.—— The Custom of the Manor was to admit for Life, the Remainder for Life, and there being only a Copyholder for Life in Possession, the Guardian in Socage, during the Heirs being under 14, admitted one to the Remainder for Life, and held good, because he had a lawful Interest. Godb. 143. pl. 177. Saplan v. Ridler. S. C. —— Cro. J. 55. pl. 27. S. C. adjornatur. — Ibid. 98. pl. 28. S. C. adjudg'd that the Grant was good.——4 Le. 238. pl. 383. S. C. adjudg'd good.——S. C. cited Supplement to Co. Comp. Cop. 82. S. 17.——S. C. cited per Cur. Lord Raym. Rep. 131. Mich. 8. W. 3. C. B. in Case of Wade v. Baker.——S. P. by Lord Commissioner Jekyl accordingly. 2 Wms's Rep. 122. Hill. 1722 in delivering the Judgment of the Court, in Case of the Lord Ch. J. Eyre v. the Countess of Shaftsbury, that Guardian may grant Copyholds in Reversion.—— 2 New Abr. 684. cites 8 W. 3. C. B Lade v. Barker, that a Guardian in Socage may grant Copyholds in Reversion according to the Custom of the Manor, tho' they * come into Possession during the Non-Age of the Infant.

4. [So] **If** Guardian in Socage **grants a Copyhold in Reversion according to the Custom of the Manor, this shall be a good Grant, and bind the Ward, tho' it comes not in Possession during the Nonage of the Ward, for he is Dominus pro Tempore. H. 2 Jac. B. and H. 3 Jac. B. between** *Shapland and Ridler*, **Adjudged.**

* It seems misprinted and that the Word (not) is omitted.

5. If

5. If a **Lord of a Manor** deviſes **by his Will in Writing,** that his Executor ſhall grant Copies according to the Cuſtom, **for Payment of Debts, and dies, the Executor, tho' he hath no Eſtate in the Manor, may make Grants according to the Cuſtom of the Manor.** **Y.** 7. 8 **Eliz. D. Manuſcript cited Co. Lit.** 58. **b.** S. P. and it is the ſame tho' it after appear'd that the Deviſe was void. Arg' 2 Le. 46 cites 17 Eliz. Stowley's Caſe —— Gilb. Treat. of Ten. 190. S. P.——4 Rep. 28. b. S. P. per Cur. that the Grant is good; For after the Aſſent of the Executors, he is in by the Deviſe.—— Co. Comp. Cop. 47. S. 34 S. P.

6. If a *Biſhop* grant cuſtomary Lands by Copy, and dies, the Copyhold is not determined by his Death, for he was Dominus pro Tempore, and this Grant ſhall bind the King, and the Grantee (the Temporalties being in the Hands of the King) ſhall have Aid of the King. 4 Rep. 21. b. in Brown's Caſe cites 4 H. 6. 11. and 21 H. 6. 37.

7. If a Manor be deviſed to one, and the *Deviſee* enters, and *makes Copies*, and *then the Deviſe is found to be void*, thoſe Copies if they are new and voluntary, and not made upon Surrenders, are void; per Popham. Ow. 28. cites 7 Eliz. Co. Litt. 58 b. S. P.

8. *Feoffee of a Manor upon Coudition* makes a voluntary Grant of Copyhold Eſtate according to the Cuſtom, and after the Condition is broken, and the Feoffor re-enters, yet the Grants by Copy ſhall ſtand. 4 Rep. 24. pl. 8. Paſch. 26 Eliz. B. R. Anon. cites D. 342. [b. pl. 55. Trin.] 17 Eliz. The Earl of Arundel's Caſe. Bendl 290. pl. 289. S. C. —— Jenk. 242, 243. pl. 26. S. C. reſolved, that if the Feoffee before or after the Condition broken, and before Entry for the Condition broken, grants a Copyhold, the Grantor ſhall not avoid this Copyhold, for the Copyholder is in by Dominus pro Tempore, and paramount the Grant. —— If a *Leaſe* be made *for Years of a Manor*, the Leaſe *to be void upon the Breach of a certain Condition*, if the Condition be broken, and afterwards the Leſſee before the Entry of the Leſſor grants Eſtates by Copy, theſe Grants ſhall never exclude the Leſſor, for preſently upon the Breach of the Condition the Leaſe is void; *but had the Manor been granted for Life, in Tail, or in Fee*, Ld. Coke thinks the Law would have fallen out otherwiſe; for before Entry the Franktenement had not been avoided, and whereſoever a Man may enter and avoid any Eſtate of Franktenement upon the Breach of a Condition, the Law adjudges nothing to be in him before Entry, and he may waive the Advantage which he might take by the Breach of the Condition if he will, and therefore, notwithſtanding the Accruer of the Title of the Grantor; yet before this Title be executed by Entry, the Grantee has ſuch a lawful Intereſt, that what Eſtate ſoever he grants by Copy in the Interim, ſhall ſtand good againſt the Grantee. Co. Comp. Cop. 48. S. 34. —— Gilb. Treat. of Ten. 187. S. P. and yet it is a Rule, that when a Man enters for Condition broken he ſhall be in of the ſame Eſtate he was in before, and therefore ſhall avoid all mean Charges and Incumbrances; but the Copyholder doth not claim his Eſtate out of the Lord's Grant, but out of the Cuſtom, and if the Grants were made after the Condition broken, yet it is all one; for before Entry the Feoffee has a lawful Eſtate, and the Feoffor may waive the Advantage of the Condition broken; But if a Leaſe be made of a Manor for Years upon Condition to be void upon the Breach of a certain Condition, and the Condition is broken, no voluntary Grants made afterwards ſhall bind the Leſſor, becauſe the Eſtate of the Leſſee is void; but if it were for Life &c then the Grants were good.

9. A Lord *for Life*, *or* any *other particular Tenant* that hath an Intereſt in a Manor, may grant Copies in *Reverſion*, though they be not executed in the Life of the Grantor. Mo. 147. pl. 292. Hill. 26 Eliz. Carew's Caſe. Ibid. ſays, that it was ſo ruled in the Court of Wards, Mich. 38 & 39 Eliz. in Welſh's Caſe; and that in the ſame Caſe of Welſh it was ſo adjudg'd afterwards in B. R. Paſch. 41 Eliz. upon a ſpecial Verdict return'd there. —— Mo. 95. pl. 236. Hill. 14 Eliz. S. P. and Wray, and Dyer, and all the Juſtices of C. B. held the Copy not good, but Manwood and Popham held e contra; but they all agreed, that if it comes into Poſſeſſion before the Death of Tenant for Life, that then it is good. —— To make ſuch Grant good, there ſhould be a Cuſtom to enable the Lord to grant in Reverſion. Mar. 6. pl. 13. Paſch. 15 Car. —— Ld. Coke ſays, that if there be *Leſſee for Years* of a Manor, and he *grants Lands by Copy in Reverſion*, that *unleſs the Reverſion happen in Poſſeſſion before the Leaſe for Years expires, the Grant is void*; the Reaſon ſeems to be, becauſe now he makes a Grant, which is only to take Effect after his Eſtate ended in Point of Poſſeſſion, and ſo will bind the future Lord's Intereſt, but let his own be at large without any Grant by Copy, which by Conſtruction they will not admit, but take the Rule ſtrictly, that he that is Dominus pro Tempore of a particular Eſtate muſt grant in Poſſeſſion; and to this Purpoſe is **Lord of Oxford's Caſe**; but it is agreed on all Hands, that if it come in Poſſeſſion during the Continuance of the Lord's Eſtate, that it is good; but there is the **Caſe of Cay v. Kay**, where it was held good notwithſtanding it

it did not come in Poſſeſſion; and there it was ſaid, that it was Cuſtom only warranted the Grant, which might as well warrant a Grant in Reverſion as Poſſeſſion, and if the Cuſtom will warrant the Grant of a Fee ſimple in Poſſeſſion by ſuch particular Tenant, why not a Reverſion in Fee? And the like Reſolution was made in Sir Peter Carew's Caſe. It ſeems the firſt Ground of this Law, that the Lord for the Time being might grant Copyhold Eſtates, was, becauſe Copyholders were only Tenants at Will, and ſo though the Lord pro Tempore had but a particular Eſtate, and yet granted the Lands in Fee, yet that was no Prejudice, but rather an Advantage to the Lord that was to have the Manor, in reſpect of the Service he was to have done him afterwards, and if he had a Mind he might put out his Tenant at his own Pleaſure; but this Uncertainty of the Copyholder's Eſtate being found inconvenient, it was afterwards adjudged, that he ſhould retain his Land, and not be ſubject to the Pleaſure of the Lord, but the other Part of the Law was left as before, viz. that Lords for the Time being might grant Lands in Fee tho' they themſelves had but a particular Eſtate, and this Cuſtom being continued to this Day, is what warrants the Grants by Copy; For it is moſt certain thoſe Eſtates that are granted by Lords that have a particular Intereſt, cannot be derived from the Intereſt of the Lords, for if they were, they muſt determine when the Lord's Eſtate determines, for nemo plus Juris dare &c. therefore where there has been a Cuſtom that ſuch Lands have been granted Time out of Mind by Copy in Fee by the Lord, there the Cuſtom gives the Eſtate, and the Lord is but Cuſtom's Inſtrument to convey even where he has them in his own Hands, and may, if he pleaſes, retain them, Gilb. Treat. of Ten. 191. 192. 193.

10. If the *Queen* be *Tenant for Life of a Copyhold Manor*, and a Copyhold of Inheritance *eſcheats* to her, ſhe may grant it again to whom ſhe pleaſes, and this ſhall bind the King, his Heirs, and Succeſſors for ever; for ſhe was Domina pro Tempore, and the Cuſtom of the Manor ſhall bind the King; adjudged. 4 Rep. 23. b. Trin. 26 Eliz. Clark v. Pennyfeather.

Ow. 4. Bragg v. Brook. S. C. held accordingly.—Godb. 135. pl. 156. Bragg's Caſe, S. C. held accordingly, per tot. Cur. but if ſhe had made a Demand of the 3d Part of Manor, then ſhe had had Manor, and might have kept Courts, and granted Copies. And the Pleading in that Caſe was that ſhe did recover the 3d Part of the Manor Per Nomen of certain Meſuages and Acres and Rents which was held to be no Recovery of the 3d Part of the Manor.—By Dower of the 3d Part of a Freehold Manor ſhe ſhall have a ſpecial Court Baron, becauſe ſhe is in by *Act of Law*; admitted; Arg'. Skin. 193.

11. A. ſeiſed of a *Manor*, in which were Copyholds, dies, leaving M. his *Widow*, who *demanded the 3d Part of the Manor for her Dower, by the Name of* 100 *Meſuages*, 100 *Gardens*, 2000 *Acres of Land* &c. and was accordingly *endowed of Parcel of the Demeſnes and Parcel of the Services* of the Copyholds, and afterwards ſhe granted a Copyhold, and if this was good was the Queſtion; for if ſhe had a Manor the Grant was good, otherwiſe not; but held, that it was not; for though ſhe might have demanded a 3d Part of the Manor, yet by demanding it by the Name of 100 Meſuages &c. ſhe could have no Manor; for a Manor muſt be *claimed by its Name of Incorporation*, as Anderſon termed it, and not otherwiſe, and then 100 Meſuages &c. cannot be ſaid to be a Manor, and ſo the Grant by her, who had no Manor, is void; per tot. Cur. Goldsb. 37. pl. 11. Mich. 29 Eliz. Brook's Caſe.

4 Rep. 23. b. pl. 7. Trin. 26 Eliz. B. R. Clark v. Pennyfeather S. P. per Cur. &c. of *Non Compos*.——8 Rep. 63. b. S. P. per Cur.——The ſame Law of a Feme Covert. 4 Rep. 23. b and 8 Rep. 63. b.——But the Baron and Feme ought to join in the Grant; per Walmſley, J. Cro. J. 99 pl. 28.—Co. Comp. Cop. 46 S. 34. S. P.—Gilb. Treat. of Ten. 184. cites ſame Points.

12. A Grant of a Copyhold by an *Infant* is good, for the Copyholder is in by the Cuſtom, and ſhall bind the Infant; as a Preſentation by an Infant to a Church is good. Noy. 41. 43 Eliz. Reeve v. Martin.

Tenant *in Tail* of a Manor wherein *Copyholds are demiſable for Life* &c. for a certain Rent; The Copyholder for Life dies, and the Lord *demiſes it by Indenture for* 21 *Years*, *rendring the ancient Rent* &c. and by the better Opinion of the Court it is good, within 32 H. 8. For it is not any Prejudice to the Iſſue as to the Rent. Noy. 106. Mich. 43 and 44 Eliz. C. B. Ld. Norris's Caſe.

14. He

14. He that *enters on Condition to retain till ſatisfied*, cannot grant Copies; per Walmſley J. Cro. J. 99. Mich. 3 Jac. B. R. in Caſe of Shoplane v. Roydler.

15. R. B. Eſq; being ſeiſed of the Manor of H. for Life, within which are many Copyhold Tenants, granteth the Stewardſhip thereof by Deed under his Hand and Seal to W. S for Life, with a Fee of 10 s. for executing thereof, and afterwards becomes *Lunatick*, and non compos Mentis, and ſo found by Inquiſition, and thereupon committed to E. C. Eſq; and others under the Seal of this Court. Reſolved by the Ld. Ch. J. Hobart, and Ch. B. Tanfield, that the ſaid *Committees* cannot grant any Copyhold Eſtate, for that they themſelves by Law have no Eſtate in the ſaid Manor, nor are Lords thereof for the Time being, but the ſaid Lunatick by his Steward may grant Copyhold Eſtates according to the Cuſtom of the ſame, whereupon it was decreed accordingly. Nevertheleſs it was ordered, that the ſaid Steward ſhould grant none without the *Privity of the Committees*, nor before the Court was acquainted therewith, and give Warrant for the granting thereof; but note, this was in Diſcretion, and the Grant by the Steward good in Law, and this meerly by way of Caution, for the Benefit of the ſaid Lunatick, and Juriſdiction of the Court. Ley. 47, 48. 9 Jac. Blewit's Caſe. Gilb. Treat. of Ten. 295. 296. cites S. C.

16. If *Tenant at Will* of a Manor grants Copies, and reſerves Rents and Services, thoſe Rents and Services are annex'd to the Manor after the Will determin'd, though the Lord of the Manor does not claim by, or under, but above him, and without any Privity of Eſtate; per Cur. 11 Rep. 18. a. Mich. 10 Jac.

17. *Leſſee for Years of a Seigniory, after the Term expired* when he was become Tenant at Sufferance, may *take a Surrender*; per Doderidge J. 2 Roll Rep. 181. Trin. 18. Jac. B. R. ſays 'twas adjudged in B. R. Ow. 28. Rouſe's Caſe.

18. In *voluntary Grants* made *by the Lord himſelf*, the *Law neither reſpecteth the Quality of his Perſon, nor the Quantity of his Eſtate*; for be he an *Infant*, and ſo through the Tenderneſs of his Age inſufficient to diſpoſe of any Land at the Common Law, or *non compos* Mentis, an *Ideot*, or a *Lunatick*, and ſo for want of Common Reaſon unable to traffick in the World, or an *Outlaw in any perſonal Action*, and ſo excluded from the Protection of the Law, or an *Excommunicate* &c. and ſo reſtrained ab omnium fidelium communione, or at leaſt a Sacramentorum participatione, nothwithſtanding theſe Infirmities and Diſabilities, yet he is capable enough to make a voluntary Grant by Copy. Co. Comp. Cop. 46. S. 34.

19. If a Feme *Seignioreſs take Baron*, and they two *join in a voluntary Grant by Copy*, this ſhall ever bind the Feme and her Heirs, and yet ſhe is not ſui Juris, but ſub poteſtate Viri, becauſe the Cuſtom of the Manor is the chief Baſis upon which ſtands the whole Fabrick of the Copyhold Eſtate. Co. Comp. Cop. 46. S. 34.

20. If a *Manor is granted Condition*, and *before the Condition is broken the Land is granted by Copy*, then the Manor becomes forfeited, and the Feoffor entreth, yet the Copyhold Eſtate remains untouched becauſe lawfully eſtabliſhed by Cuſtom, and yet all mean Eſtates and Charges whatſoever granted by the Feoffee at the Common Law were voidable upon the Entry of the Feoffor; for we have a Ground in Law, that when an Entry is made for Breach of a Condition, the Party to all Intents is in the ſame Plight that he was in at the Time of the making of the Eſtate. Co. Comp. Cop. 46, 47. S. 34.

21. If the *Lord* or he (whoſoever he be) that makes a voluntary Grant by Copy, *has no lawful Intereſt in the Manor, but only an uſurped Title*, his Grant ſhall never ſo bind the right Owner, but that upon his Entry

he may avoid them, otherwiſe we ſhould make Cuſtom an Agent in a Wrong, which the Law will never ſuffer. Co. Comp. Cop. 47. S. 34.

22. If a *Diſſeiſor of a Manor dies ſeiſed*, notwithſtanding his Heir comes in by ordinary Courſe of Deſcent, yet becauſe the Tort commenced by his Anceſtor is ſtill inherent to his Eſtate, if any *Copyhold Eſtate* be *granted by the Heir*, it *may be avoided by the Diſſeiſee immediately* upon his Recovery, or upon his Entry. Co. Comp. Cop. 47. S. 34.

23. *So* if a *Diſſeiſor enfeoff a Stranger of the Manor*, notwithſtanding the Feoffee come in by Title, yet no Grant made by him of Copyhold Land ſhall ever bind the Diſſeiſee no more than a Grant made by the Diſſeiſor himſelf. Co. Comp. Cop. 47. S. 34.

Gilb. Treat. of Ten. 296. S P and cites S. C.

24. If *Tenant in Tail of a Manor diſcontinues and dies*, and after the *Diſcontinuee grants Copyhold Eſtates*, the Heir recovering in a Formedon in the Deſcender may avoid the Grants; for though the Diſcontinuee comes in under a juſt Title, yet his Intereſt being determined by the Death of the Tenant in Tail, the Continuance of the Poſſeſſion is a Tort to the Heir, and Acts done by Tortfeiſors tending to the Diſinheritance of the right Owners Cuſtom will never ſo ſtrengthen, but they may be annihilated. Co. Comp. Cop. 47. S. 34.

So if he alone grants Copies and dies, it ſeems that after his Death ſhe may avoid them; For he had nothing but in Jure Uxoris. Gilb. Treat. of Ten. 312.

25. If a *Man ſeiſed of a Manor in right of his Wife aliens* the Manor *and dies*, any Grant made of Copyhold Eſtates after his Death may be avoided by the Feme upon her Entry, or her Recovery, in a Cui in Vita. Co. Comp. Cop. 47. S. 34.

Gilb. Treat. of Ten. 189. S. P.

26. A Man ſeiſed of a Manor in Fee has Iſſue a *Daughter*, and dies, his *Wife privement enſeint of a Son*; ſhe makes Grants by Copy, and afterwards a Son is born; voluntary Grants made by her are good, for ſhe was Legitima Domina pro Tempore. Co. Comp. Cop. 47. S. 34.

Gilb. Treat. of Ten 189. S. P. For he was Dominus pro Tempore.

27. *Feoffee of a Manor on Condition to enfeoff* another the next Day, makes voluntary Grants by Copy, this ſhall bind. Co. Comp. Cop. 47. S. 34.

So, if he were convict by Verdict or Confeſſion. Ibid. —— Gilb. Treat. of Ten. 189. both the ſame Points.

28. *Lord of a Manor commits Felony*, and *after Exigent granted he paſſes away Copyhold Eſtates, and then is attainted*, his voluntary Grants are good; for he was Dominus pro Tempore, though by Relation the Manor was forfeited from the Time of the Exigent awarded. Co. Comp. Cop. 47. S. 34.

29. If a *Manor* be *granted with a Feme in Frank-Marriage, and* there is a *Divorce had Cauſa præcontractus*, ſo that now the Intereſt of the Manor is granted to the Feme only, and by Relation the Marriage is void ab initio, yet becauſe the *Baron was legitimus Dominus pro Tempore*, any Copyholders Eſtates granted before the Divorce remain good. Co. Comp. Cop. 47. S. 34.

30. If a *Man eſpouſes a Feme Seignioreſs under the Age of Conſent*, and *after ſhe doth diſagree*, though the Marriage by Relation was void ab initio, yet *Copyholds granted before Diſagreement ſhall never be avoided*, Cauſa qua ſupra. Co. Comp. Cop. 47. S. 34.

Gilb. Treat. of Ten. 188. 189. S. P. ſays, that in this Caſe, and in Caſes of Grants made after the Condition broken, the Grantor hath a defeaſible Title, and yet the Eſtates

31. If an *Infant infeoffs* me *of a Manor*, though he may enter upon me at his Pleaſure, yet Grants made by me by Copy before his Entry ſhall never be defeated by any ſubſequent Entry. Co. Comp. Cop. 48. S. 34.

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are good that are granted to the Coppyholders; yet my * Lord Coke ſays, that if any one has a tortious or defeaſible Eſtate, ſubject to the Action or Entry of another, his voluntary Grants ſhall not bind. To reconcile this, it ſeems my Lord Coke muſt be underſtood, that when any one hath an Eſtate, to which another has a Right at preſent, that the Owner of ſuch a defeaſible Eſtate cannot make voluntary Grants, but the Infant and the Feoffor have no ſuch Right; for the Feoffees in both Caſes have lawful and rightful Eſtates in the Land till they are defeated, and before they are defeated the Feoffors have no Right.

* 4 Rep. 24. a. pl. 7. Trin. 26 Eliz. S. P. unanimouſly agreed in B. R. in Caſe of Clarke v. Pennyfeather.

32. If a *Parſon after Inſtitution, and before Induction, a Manor being Parcel of his Glebe Lands, grants Lands by Copy, and after is inducted*, this admitting of the Copyholders is no binding Act; for though as to the Spiritualities he be a compleat Parſon preſently upon the Inſtitution, yet as to the Temporalties he is not compleat before Induction. Co. Comp. Cop. 48. S. 34.

33. *So if* a Parſon be *admitted, inſtituted, and inducted, but does not ſubſcribe to the Articles* according to the 13 Eliz. and grants Lands by Copy as before, this Grant ſhall not conclude the ſucceeding Incumbent, becauſe his Admiſſion, Inſtitution and Induction, were wholly void in themſelves. Co. Comp. Cop. 48. S. 43. Gilb. Treat. of Ten. 190. 191. S. P. but ſays Quære tamen.

34. *But* had the Parſon been *deprived for Crime of Hereſy, or for being mere Laicus*, although he be declared by Sentence to be incapable of a Benefice, and ſo his Preſentment void (ab initio,) yet becauſe the Church was once full, until the Sentence declaratory came, although the Deprivation ſhall relate to ſome Purpoſes, yet becauſe the *Preſentment is not in it ſelf void*, ſurely a Relation ſhall never be ſo much favoured as to avoid a Copyhold Eſtate in this kind. Co. Comp. Cop. 48. S. 34.

35. If a *Manor* be *granted pur auter Vie*, and *Ceſtuy que vie dies*, and the Grantee continues ſtill in the Manor, and makes Grants by Copy, theſe ſhall not bind the Grantor of the Manor, for *immediately upon the Death of Ceſtuy que Vie, the Grantee was but a Tenant at Sufferance*, and had no Manner of lawful Intereſt; for a Writ of Entry ad Terminum qui præteriit lies againſt him as againſt Deforceor. Co. Comp. Cop. 48. S. 34.

36. And *ſo* if a *Tenant for Life of a Manor makes a Leaſe for Years of the ſame Manor, and dies*, Copyhold Eſtates granted by the Leſſee after the Death of a Tenant for Life are voidable by the firſt Leſſor. Co. Comp. Cop. 48. S. 431.

37. *Grants* made *an Alienation in Mortmain before the Lord Paramount has entered* for a Forfeiture ſhall not be defeated. Co. Comp. Cop. 48. S. 34.

38. A Lord to grant or allow a Copyhold muſt be ſuch a one as by Littleton's Definition is ſeiſed of a Manor, ſo that he muſt be *in Poſſeſſion at the Time of the Grant*, for although he have good Right and Title, yet if he be not in Poſſeſſion of the Manor it will not ſerve; and on the other Side, if he be in Poſſeſſion of the Manor, though he have neither Right nor Title thereunto, yet in many Caſes the Grant and Allowance of ſuch a Copy is good, as Dominus de Facto, ſed non de Jure; And in ſome Caſes a Copyhold ſhall be adjudged good, according to the Largeneſs of the Eſtate of the Lord that granted the ſame, and in ſome Caſes ſhall continue good for a longer Time than the Eſtate of the Grantor was at the Time of the Grant; But that is to be underſtood in Caſe of Neceſſity, otherwiſe it will not be allowed. Calth. Read. 48, 49.

39. If a Man have a *Title to enter into a Manor for a Condition broken*, and he grants a Copyhold of the ſame Manor (being void) at a Court Baron, this is a good Grant, for the keeping of the Court amounts to an Entry into the Manor. Calth. Reading. 49.

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40. A Man *ſeiſed of a Manor for Life whereunto is Copyhold of Inheritance belonging*, and a *Copyholder ſurrenders to the Uſe of a Stranger in Fee*, the Lord may grant this in Fee, and this Grant ſhall bind him in the Reverſion; *but if* the Copyholds are *demiſeable for Lives*, it is otherwiſe, for then he cannot upon Surrender grant the ſame longer than the Life of the Grantor. But if the *Lord* of a Manor *for Years, or during the Minority of a Ward*, of which the Copyholds are *demiſeable for* 3 *Lives ſucceſſively, and not ſurvivingly*, in this Caſe, if the Copyholder dies, the Lord may grant the ſame being void for 3 Lives at his Pleaſure, and this ſhall bind him in the Reverſion, or the Heir of his full Age. Calth. Reading. 50.

(H) Grants by whom. Good. Where the Manor is divided.

1. *Tenant in Dower of the* 3*d Part of a Manor* has a Manor, and may keep Court, and grant Copies. Godb. 135. pl. 156. Mich. 29 Eliz. in Bragg's Caſe.

Gilb. Treat. of Ten. 198, 199. cites S. C. ſays, that when the Grant is of all the Copyhold Lands, there is ſtill but one Court for Copyholders, which there was in Effect when the Manor conſiſted of Freeholders.

2. The *Lord by his own Act cannot make of one and the ſame Manor, at Common Law*, 2 *ſeveral Manors, conſiſting of Demeſnes and Freeholders*; *but* he may by his own Act make *a cuſtomary Manor*, conſiſting *of Copyholders*, to hold Courts, and make Admittances and Grants of Copyholds. 4 Rep. 26 b. Trin. 30 Eliz. in a Nota of the Reporter, at the End of the 3d Reſolution, in the Caſe of Melwich v. Luter, ſays it may appear by the Judgment in that Caſe.

4 Rep 26. a. b. [pl. 12. Melwich v. Luter] was cited, that this was a good Copy. But it was anſwered, that it was a ſtrange Judgment, and never was entred by Direction of the Court, and that in Error brought thereon in the Exchequer Chamber, the Opinion of the Juſtices was, that it was erroneous, and that thereupon the Copyholder compounded, and took only his Corn, and relinquiſhed the Title. Cro. E. 443. in S. C. ——— Cro. E. 203 the ſame Remark in a Nota there, at the End of the Caſe of Melwich v. Luther, mentioned there by the Reporter, as told him by Ewens, who was of Counſel in the Cauſe. ——— Gilb. Treat. of Ten. 197. ſays, that there are Precedents that ſuch Grantee of the Inheritance of Copyhold Lands cannot keep Court no more than the Grantee of the Inheritance of one Copyhold, and takes Notice of what is mentioned in Cro. E. as above, of the Opinions of the Juſtices and Barons in the Exchequer Chamber, and that the Parties compounded.

3. A. was Lord of the Manor of C. which *extended into B. and C.* &c. and in B. were divers Copyholders for Life. A. *ſuffered a Recovery of the Manor, excepting the Land in B.* Afterwards A. *conveyed the Part which extended into B. to J.* S. and A. and J. S. kept a Court at B. and the Steward granted a Copyhold, being *a Copyhold for Life*, to the Plaintiff. Reſolved, that the Grant was void, becauſe there *was not any ſuch Manor of B. before or now*; and per Anderſon, if ſuch Severance had been of *Copyholders of Inheritance*, the Copyholders and their Heirs ſhould have had it, but it *can never be ſurrendered*; for Surrenders are by Cuſtom, and therefore they ought to be in the Court of the Manor, and a Surrender to the Lord himſelf in his Houſe, or out of Court, is not good, quod Beaumont conceſſit. Cro. E. 442. pl. 6. Mich. 37 & 38 Eliz. C. B. Bright v. Forth.

4. A. ſeiſed of a Manor conſiſting of Services, Demeſnes, and 50 *Copyholds, grant to* B. the *Moiety of* 20 of them &c. and afterwards *confirm'd his former Grant, and granted the Moiety of the Manor.* A's. Eſtate came to C. and B's. to D. and then C. and D. *hold a Court, and join in the Grant of the Copyholds* to maintain the Grant. It was argued, that before the Grant to B. it was a compleat Manor, and while ſuch it had 2 Courts (viz) a Freeholder's Court, and a Copyholder's Court, ſo that by the Grant of the Moiety of 20 Copyholds, the Freehold Part of the Manor is not touched, but only a Moiety of 20 Copyholds, and ſo a Copyhold Court might be held for 20 Tenements, and as to the other 30 they may remain as they were before; but *as to the Moiety of 20 Tenements*, they might *keep Court alone, and grant Moieties*; Suppoſe the *intire Intereſt* of 20 Copyholds had been granted, then they might have held Courts, and the *Difference is, between one Tenement being granted and more*; for if more than one be granted, then the Grantee may hold Courts, and make Admittances, this being *for the Benefit of the Tenants*; ſo that † had it been for 20 Copyholds it had been good, whereas this is of a Moiety; had it been of a Moiety of all they had been *Tenants in Common*, and might have joined in keeping Courts, and if ſo, why not when a Moiety of 20 is granted? the Court adviſare vult, but inclined for Plaintiff accordingly. Skin. 191. pl. 6. Trin. 36 Car. 2. C. B. Lemon v. Blackwell.

* 4 Rep. 26. b. 27. a. pl. 13. S. P. in a Nota by the Reporter, in the Caſe of Neale v. Jackſon, Paſch. 37 Eliz. C. B. and cites Murrel's Caſe, which is at 4 Rep. 24. b. 25. a. 33 & 34 Eliz. B. R.

† 4 Rep. 26. b. Neale v. Jackſon, S. P.

Cro. E. 102. pl. 10. S. C. —But ſee the Caſe of Bright v. Forth, ſupra, pl. 3. and the Notes there.

(I) Grants by Jointenants.

1. TWO *Jointenants of a Manor. One grants a Copy*; the ſame is void; for he is not Dominus pro Tempore; per Anderſon Ch. J. Le. 234. pl. 316. Mich. 32 & 33 Eliz. obiter, in Caſe of Lancaſter v. Lucas.

If there be Jointenants of a Copyhold, one cannot alien the whole, but if there be two Jointenants of a Manor, and a Copyhold eſcheats, one of them may grant this Copyhold, and his Companion ſhall never avoid any Part of it. Co. Comp. Cop. 48. S. 34. —— If there are two Jointenants of a Manor, and a Copyhold eſcheats, one may grant the whole, for he is Dominus pro Tempore, and is ſeiſed Per my and Per tout. Gilb. Treat. of Ten 312.

(K) Voluntary Grants. Good. And how conſidered.

1. WHEN Copyhold Lands come into the Lord's Hands by *Eſcheat* or *Forfeiture*, he may grant them by Copy, rendering *greater Rent*, but not when he admits a Tenant. 2 Roll. Rep. 236. Mich. 20. Jac. B. R. Smith v. Reynard.

2. If the Copyholder (voet) (will) [but it ſhould ſeem rather (poit) may] priviledge any to *cut Trees*, the Lord may in his new Grant *reſtrain it upon Condition*, and yet the Copyhold is not deſtroyed by it. 2 Roll Rep. 236. Mich. 20 Jac. B. R. Smith v. Reynard.

(L) Grants of Copyholds. To whom they may be made.

1. THE ſame *Perſons* that are *capable of a Grant by the Common Law* are capable of a Grant by Copy, according to the Cuſtom of the Manor. Co. Comp. Cop. 49. S. 35.

2. An *Infant*, a Man *non ſanæ Memoriæ*, an *Ideot*, a *Lunatick*, an *Outlaw*, or an *Excommunicate*, may be Grantees of a Copyhold Eſtate. Co. Comp. Cop. 49. S. 35.

3. *The Lord himſelf may take* a Copyhold to his own Uſe. Co. Comp. Cop. 49. S. 35.

4. One *Jointenant* may receive a Copyhold from the Hands of his Joint-Companion, becauſe it paſſes by Surrender, not by Livery. Co. Comp. Cop. 49. S. 35.

5. A *Feme Covert* may be a Purchaſor of Copyhold, and this Purchaſe ſhall ſtand in Force until her Husband diſagrees. Co. Comp. Cop. 49. S. 35.

6. He ſhall be ſaid a *Perſon ſufficient* to be a Copyholder, *who is of himſelf able, or by another, to do the Service of a Copyholder*; as an *Infant* may be a Copyholder; for his Guardian, and Prochein Amy may do the Services; So a *Feme Covert* and her Husband ſhall do the Service; But a *Lunatick*, or *Ideot*, cannot be a Copyholder, becauſe they cannot do the Service themſelves, nor depute any other, and the Lord ſhall retain the Copyhold of an Ideot, and not the Queen. Calth. Reading. 51, 52.

7. A *Bond-Man* or *Alien born* may be a Copyholder, and the King or Lord cannot ſeiſe the ſame. Calth. Reading. 52.

8. But a *Man cannot be a Copyholder unto a Manor, whereof he himſelf is Lord, although* he be but Dominus *pro Termino Annorum, or in Jure Uxoris.* Calth. Reading. 53.

This in Roll is Letter (D) in fol. 499. See (N. b)

(L. 2) Grant. *At what Place* it may be made.

1. THE Lord of a Copyhold Manor may himſelf grant a Copyhold at any Place out of the Manor. Co. 4. 26. b. between *Melwich and Luter.*

(M) Grants. How they may be made, and of what.

For the Grant as to the Trees which ſhall grow afterwards is void. Mo. 94. pl. 234.

1. IF the *Lord grants to his Copyholder the Trees growing upon the Lands, and which ſhall after grow, with Liberty to cut them down,* and carry them away, he may juſtify the cutting of the Trees which are growing, and it ſhall not be a Forfeiture of his Copyhold, becauſe the Lord hath by his Grant diſpenſed with it, but *he cannot cut down the Trees which ſhall thereafter grow*, as it was ſaid by Plowden and

and Popham. Supplement to Co. Comp. Cop. 80. S. 13. cites Paſch. 12. Eliz. in B. R. Mo. 94.

Anon. S. C. —— 3 Le. 29. pl. 57.

Mich. 15 Eliz. C. B. Anon. S. P. as to a Leaſe of Lands and Bargain and Sale to the Leſſee of the Woods growing, but that was not (as it ſeems) of Copyhold Lands.

2. *One who has a particular Eſtate in a Manor cannot grant* a Copyhold *by Parcels, or demiſe Part, and retain the Reſidue himſelf*; and therefore if a Feme be endow'd of ſeveral Copyhold Tenements, ſhe cannot grant Part of them by Copy in Poſſeſſion or Reverſion; per Popham. Cro. E. 662. in pl. 10. Paſch. 41 Eliz. B. R.

3. If the Steward *diminiſhes the Ancient Rent and Services* 'tis a void Copy. Cro. E. 669. pl. 13. Mich. 41 and 42 Eliz. B. R. in Caſe of Harris v. Jayes.

4. If the *Lord* of a Manor *having ancient Copyhold in his Hands, will by a* Deed of *Feoffment*, or by a *Fine, grant this Land to one to hold at the Will of the Lord according to the Cuſtom*, yet this cannot make a good Copyhold. Calth. Reading. 47.

5. In *Grants* made *upon Forfeitures* &c. the *Ancient Services muſt be reſerved, and the Cuſtoms alſo.* The Reaſon of this ſeems to be, becauſe there is nothing but Cuſtom to warrant the Grant by Copy, which ought to be ſtrictly purſued as to the Eſtates, Cuſtoms, Services, and Tenure, or elſe it is not the Eſtate that was demiſed before; *But* yet *if there be a Copyholder in Fee*, it ſeems the *Lord may releaſe Part of the Services*, and not to do any Prejudice to the Copyholder's Eſtate, for there is an Eſtate there in being that appears to be the old Eſtate; *but when the Lord grants a new Eſtate by Copy*, ſince it is an Eſtate againſt common Right, and warranted only by Cuſtom, *that muſt be chiefly purſued to bind the Heir.* Lord Coke ſays, * if the ancient Cuſtoms and Services be not reſerved, the Grant by Copy will not bind the Heir or Succeſſor. This being ſpoken ſo generally, ſeems to intimate plainly, that if the Anceſtor hath a Fee in the Manor, and he grants without obſerving the Cuſtom, his Heir may avoid it, becauſe it being a Grant againſt common Right, the Cuſtom muſt be purſued. (Quære Cro. E. 662. 1 Roll. Ab. 499) Beſides, he puts Heir in the ſame Equipage with Succeſſor, and if he means with the Conſent of Dean and Chapter, then a Biſhop had as much Power as an Anceſtor; if he means without the Conſent, yet it is not that ſhould avoid the Grant, but the Non-reſervation of the Ancient Tenures. And *ſo ſtrict is the Law* in this point, that if the Rent be reſerved in Silver, where anciently it was in *Gold, or payable at two Feaſts, where anciently it was* payable *at one* Feaſt, *or if two Copyholds eſcheat, one uſually demiſed for* 20 s. *and the other* 10 s. *and he demiſes both for* 30 s. ſo *if* 3 *Acres eſcheat held by* 3 s. *and he grants one by Copy, reſerving* 1 s. this is not good; for the Cuſtom, which is the only Thing that warrants ſuch Grants, muſt be purſued. Gilb. Treat. of Ten. 185. 186. 187.

* See Co. Comp. Cop. 52. S. 41.

(N) Grants. How ſeveral Eſtates are granted in one Copy.

1. A *Seiſed of Copyhold Lands of the Part of his Father, and* of other Copyhold Lands *of the Part of his Mother*, and thereof died ſeiſed, his Son and Heir is admitted by one Copy and one Admittance; if that Son dies without Iſſue, the Copyholds ſhall *deſcend ſeverally*, the one to the Heir of the Part of the Father, the other to the Heir

Heir of the Part of the Mother. Arg' 3. Le. 109. pl. 158. Trin. 26 Eliz. B. R. in Caſe of Taverner v. Cromwell.

3 Le. 109. pl. 158 Taverner v Cromwell, S. P. but not yet reſolv'd.

2. The *Tenend' per Antiqua Servitia* &c. in the ſingle Copy, continues the ſeveral Tenures, tho' the Parcels are all put *into one Copy*. Reſolved. 4 Rep. 27. 6. pl. 15. Trin. 26 Eliz. B. R. Taverner v. Cromwell.

Cro. E. 779. pl. 13. Dalton v. Hammond, S C. & S. P. reſolv'd; for perhaps the Heir may accept the one at the Fine aſſeſſed, and refuſe the others upon ſuch Fines Mo. 622, 623. pl. 851. S C. held accordingly. ——And a Rent denied of one *forfeits* that Copyhold, and not the other; Arg' Het. 6. cites Taverner's Caſe.

3. *Fines* aſſeſſed ſeverally where the Copyholds are ſeveral, and the Demand muſt likewiſe be ſeveral, 4. Rep. 28. a. pl. 16. Mich. 42 and 43 Eliz. B. R. Hubbard v. Hamond.

(O) Grant. Operation thereof. And what Eſtate and Intereſt paſſes thereby.

1. THOUGH the Quantity of the Lord's Eſtate in the Manor be not reſpected, yet the Quantity of his Eſtate in the Copyhold is regarded; for if a *Copyholder in Fee ſurrenders to the Uſe of the Lord for Life*, the *Remainder over to a Stranger*, *or reſerves the Reverſion to himſelf*, if the Lord will grant this by Copy in Fee, whatſoever Eſtate the Lord has in his Manor, yet having but an Eſtate for Life in the Copyhold, no larger Eſtate ſhall paſs than he himſelf has; Quia nemo poteſt plus Juris in alium transferre, quam ipſe habet. Co. Comp. Cop. 47. S. 34.

2. What *Acts* ſoever are *not confirmed by Cuſtom*, but only ſtrengthened by the Power, Authority, and Intereſt of the Lord, *have no longer Continuance than the Lord's Eſtate* continues; and therefore it is held, that if a *Tenant for Life of a Manor grants a Licence to a Copyholder to alien, and dies*, the Licence is deſtroyed, and *the Power of Alienation ceaſes*. Co. Comp. Cop. 47. S. 34.

3. If a *Copyholder for Life*, *Remainder over in Fee to a Stranger*, *ſurrenders in Fee*, and the *Lord admits accordingly*, yet an Eſtate for Life only paſſes. Co Comp. Cop. 48. S. 34.

4. So if the *Lord* of a Manor *grants a Copyhold for Life where an Eſtate in Fee is warrantable*, and the ſame *Grantee ſurrenders in Fee to the Uſe of a Stranger*, and the *Lord admits him*, *ſecundum Effectum ſurſum-redditionis*, Ld. Coke thinks *no Fee paſſes*; for tho' the Lord's Admittance may prima facie ſeem to amount to a Confirmation of the Eſtate ſurrendered, the Reverſion reſts in him to diſpoſe of according to the Cuſtom; As where a Leſſee of Years, at the Common Law, makes a Feoffment in Fee, and makes a Letter of Attorney to his Leſſor to deliver Livery and Seiſin, who executes it accordingly, though the Leſſor be uſed as an Inſtrument to perform the Will of the Leſſee, yet this being his voluntary Act, the Law takes it as a Conſent for the paſſing away of the whole Inheritance. But if you look narrowly into both Caſes, you ſhall find the Difference, in the latter Caſe by the Feoffment the Fee is deveſted out of the Leſſor, and therefore a Conſent will ſerve to transfer the Reverſion, but in the former Caſe, the Reverſion is not pluckt out of the Lord by the Surrender, and therefore an *implied Conſent* is too weak to remove it. Co. Comp. Cop. 48. S. 34.

5. If

5. If the *Lord in open Court doth grant Copyhold* Land, and the *Steward makes no Entry thereof in the Court Rolls*, this is not good, tho' it be never ſo publickly done, nor no collateral Proof can make it good. Calth. Reading. 47.

6. *But if the Tenant have no Copy made* unto him out of the Roll, *or if he loſe his Copy*, yet the Rolls are ſtill a ſufficient Title for his Copyhold, *if the Rolls be alſo loſt*, yet it ſeems that by *Proof* he can make this good. Calth. Reading. 47, 48.

[P] Cuſtom.

Purſuance.

What ſhall be ſaid a Purſuance *of the Cuſtom.* Copyhold.

This in Roll is Letter (L) in fol. 511.

1. IF the Cuſtom of the Manor be, That the Lord may demiſe the Copyholds in Fee, he may demiſe them for Life, Years, or in Tail, for theſe Eſtates are included within a Fee which is the greater. Mich. 37 Eliz. B. R. between *Staunton* and *Barns*, adjudged; and there ſaid by Popham, that it was ſo agreed per Curiam at St. Alban's Term. Co. Lit. 52. b.

Cro E. 373. pl. 20. S. C. reſolved. ——— S. P. by two Juſtices, the other being abſent, held accordingly, becauſe Omne majus continet in ſe minus. Godb. 20. pl 26. Paſch. 26 Eliz. C. B. Anon. ——— 4 Rep. 23. a. pl. 5. Mich. 35 & 36 Eliz. B. R. Gravenor v. Todd, S. P. adjudg'd.

2. So if the Cuſtom of the Manor be, That the Lord may ſolummodo demiſe his Copyhold Land in Fee, yet the Lord may demiſe it for Life, Years, or in Tail, though there were never any ſuch Eſtates made before, for the Word Solummodo is not to be taken ſo ſtrictly to reſtrain the Lord from this Liberty, which the Law gives him upon the general Cuſtom, but that he had Solummodo to grant in Fee, which does not take away the Liberty which the Law gives. Mich. 37 Eliz. B. R. between *Staunton* and *Barns*, adjudged, which intratur Hill. 36 Eliz. Rot. 492. Co. Lit. 52. b.

Cro. E. 373. pl. 20. S. C. but ſtates it to be demiſable in Fee or for Life, Solummodo ea capienti extra Manus Domini, and the Lord demiſed it to A. for Life, Remainder to B. in Tail, Remainder to C. in Fee; and reſolv'd that the Remainders were good, and the Remainders and the particular Tenant make but one Eſtate, and it being found that the Cuſtom is, that it ſhall be granted Solummodo ea capienti, it is void therein, wherefore it was adjudg'd accordingly for the Plaintiff. ——— S C. cited Arg. 2 Ld. Raym. Rep. 997. ——— Ibid. S. C. cited 1001. by Holt Ch. J. ——— S. P. by Holt Ch. J. and cited S. C. 1 Salk. 189. ——— Gilb. Treat. of Ten. 308. cites S. C. held accordingly; but puts the Caſe, that ſuppoſe it had been ſhewn and pleaded, that he could not grant any otherwiſe; and ſays Quære of that.

3. If the Cuſtom be, That Copyholds may be granted for three Lives, a Copy may be granted to three for the Lives of two within the Cuſtom, for there is not any Inconvenience to the Lord, though it be for the Life of another; for there ſhall not be any Occupancy thereof, but the Lord ſhall have it, if the Tenants pur auter Vie die, living the ceſtuy que Vies; and this is not a greater Eſtate than for three Lives; but it is for two Lives, which is leſs than the Cuſtom warrants. M. 15 Ja. B. R. between *Ven* and *Howell*, per Curiam.

S. C. cited Arg Ld. Raym. Rep. 998. and ibid. 1001, 1002. by Powell J. ——It may in ſuch Caſe be granted to A. for Life, and to B. durante Viduitate ſua; for where the Cuſtom warrants the greater Eſtate it warrants the leſſer, eſpecially here, becauſe this is alſo an Eſtate for Life, but limited, and as it were conditional. Cro E. 323. pl. 11. Paſch. 36 Eliz. B. R. Downs v. Hopkins. ——— 4 Rep. 29. b. 30. a. pl 19. S. C. adjudged. ——— Supplement to Co. Comp. Cop. 81. S. 16. cites S C. ——— S P. & S. C. cited

cited by Holt Ch J. 1 Salk. 189. —— Gilb. Treat. of Ten 207. cites S. C. but ſays it is not good Vice verſa.

4. If Cuſtomary Land hath been *of ancient Time grantable in Fee*, and now of late Time *for the Space of* 40 *Years hath granted the ſame for Life only*, yet the Lord may, if he pleaſe, reſort to his ancient Cuſtom, and grant it in Fee. Le. 56. pl. 70. Paſch. 29 Eliz. C. B. Kemp v. Carter.

Supplement to Co. Comp. Cop. 82. S. 16. cites S. C.

5. If cuſtomary Land within a Manor hath been *grantable in Fee*, if now the ſame *eſcheats to the Lord and he grants the ſame to another for Life*, the ſame was holden a good Grant, and warrantable by the Cuſtom, and ſhould bind the Lord; for the Cuſtom, which enables him to grant in Fee, ſhall enable him to grant for life, and *after the Death of the Tenant for Life, the Lord may grant the ſame again in Fee*, for the Grant for Life was not any Interruption of the Cuſtom &c. which was agreed by the whole Court. Le. 56. pl. 70 Paſch. 29 Eliz. C. B. Kemp v. Carter.

Ld. Raym. Rep 994. S. C. adjudg'd.—— 3 Salk 181. pl 1. S. C. adjudg'd, but

6. Cuſtom in a Manor to grant Lands by Copy to 2 *or* 3 *Perſons for their Lives, Habend' ſucceſſive* &c. Grant to A. Habend' to him during the Lives of A. B. & C. is warranted by the Cuſtom. 1 Salk. 188. Hill. 13 W. 3. B. R. Smartle v. Penhallow.

Powell J. doubted. —— 6 Mod. 63. S. C. and the Grant held good.

(P. 2) Cuſtoms. Pleadings.

1. A Cuſtom is alleged *quod infra maner' prædictum talis habetur nec non a toto Tempore cujus &c. non exiſtit, habebatur Conſuetudo (viz.) quod quilibet Tenentes prædictorum Tenementorum vocat Collins* &c. *have uſed to have Common in ſuch a Place of the Manor*, this was held well as well for the Form as the Matter, and that ſuch a Preſcription might be applied to one Copyholder. For *Copyholders cannot preſcribe* by reaſon of the Baſeneſs of their Eſtate in their own Names, *but in the Name of the Lord*, as to ſay, that the Lord of the Manor, and all his Anceſtors, and thoſe whoſe Eſtate he hath, have had, in ſuch a Place for him and his Tenants at Will &c. as 22 H. 6. 51. a. and this ſhall ſerve when a Copyholder claims Common or other Profit in the Land of a Stranger; *but when he claims* Common or other *Profit in the Soil of the Lord, he cannot preſcribe in the Name of the Lord, nor in his own Name, but prout ſupra.* 4. Rep. 31. b. 32. Mich. 18 & 19 Eliz. B. R. Foiſton v. Cracherode.

2. It was pleaded, *that the Copyholders of the Manor of B. C. that the Lands where demiſed and demiſable Time out of Mind*; but adjudg'd ill, becauſe it is not certain whether they were demiſed *for Years, Life in Tail, or in Fee*; and *it was alſo ſhewn, that the Lands were granted by the Steward, but did not ſhew his Name* which is iſſuable. Sav. 131. pl. 205. Paſch. 36 Eliz. The Archbiſhop of Caterbury's Caſe.

3. Copyholders in alleging a Cuſtom *need not ſhew their Eſtates in Certainty*, but if any Tenants of Freehold at Common Law will claim any ſuch Benefit, they ought to ſhew their Eſtate, and the Names of the Tenant in Fee by a Que Eſtate; per Saunders; Arg' 2 Saund. 326. Paſch. 23 Car. 2. in Caſe of Hoskins v. Robins.

(P. 3) Of Grants in Reverſion. Where. And by whom. And Pleadings.

See (G) pl. 3, 4.

1. IN *Treſpaſs*; the *Defendant pleaded that the Place was Copyhold, and that a Grant was made to S. who granted it to him*, &c. The Plantiff *replied, that before the Grant* pleaded by the Defendant, *A. L. was Leſſee for Life, according to the Cuſtom of the Manor, and that the Cuſtom is, that the Lord may grant Copies as well in Reverſion as in Poſſeſſion, and that M. being Lord* of the Manor, *granted a Copy in Reverſion to the Plantiff before the Grant made to S. and that after the Death of A. L. he entered* &c. The Defendant *rejoined*, that there is *a Cuſtom* in the Manor, *that the Lord may grant Copies in Reverſion, by the Agreement and Conſent of the Tenant in Poſſeſſion and not otherwiſe, abſque hoc* that they are grantable Modo & Forma; and upon Demurrer Walmſley Serjeant argued, that this Rejoinder was ill and repugnant, for the Words (if any Copy may be granted) imply, that there is ſuch a Cuſtom, and then the Traverſe of the Cuſtom is void, and ſo is the Cuſtom itſelf. Goldsb. 103. pl. 8. Mich. 30 & 31 Eliz. Plimpton v. Dobynett.

3 Le. 226. pl. 303. Mich. 31. Eliz. C. B. Anon. but S. C. and it was anſwered by the Counſel of the other Side, that this Cuſtom might have a lawful Beginning, and might be grounded on the Reaſon of the Common Law, that a Remainder ſhould not be without the Aſſent of the particular Tenant, and ſo the Cuſtom might be good. The Court delivered no Opinion in the Caſe, but it was adjourned.——Godb 140. pl. 171. Anon. but S. C. argued, ſed Adjornatur.—Supplement to Co. Comp. Cop. 84. S. 19. cites S. C. and that it was ſaid, that this Cuſtom might be good, for it might be ſo agreed and granted by the Lord at the Beginning, upon the Creation of the Manor; and that it ſeemed to be grounded upon the Reaſon of the Common Law, that a Remainder ſhould not be without the Aſſent of the particular Tenant, and to commence with his Eſtate, and that therefore it was a good Cuſtom. Quære the Caſe; for it was not reſolved, Mich. 31 Eliz. in C. B.——Nels. Lex. Man. 93. pl. 11. cites Gouldsb. 103. S. C. and that it is a void Cuſtom, but this ſeems to be his own Opinion only, and not warranted by either of the Books above cited.——And 3 Nels. Abr. 355. pl. 5. cites S. C.

2. If a *Man* (it was ſaid) be *ſeiſed of a Manor, whereof there are divers Copyholders admittable for Life or for Years, and he leaſes the Manor to another for Term of Life*, the Leſſor [Leſſee] may make a Demiſe by Copy in Reverſion, to commence after the Death of the firſt Copyholders, and that is good enough; but the Cuſtom of ſome Manors is to the Contrary, and that is allowed. Hetl. 54. Mich. 3 Car. C. B. Davies v. Forteſcue.

If a Leſſee for Years of a Manor grants a Copyhold in Reverſion, and *before the Reverſion happens the Term is expired*, the Grant is void; and *ſo* Ld. Coke takes the Law to be, *if the Leſſee ſurrenders his Term*, and therefore his Leaſe ſhould have ended in Point of Limitation the Reverſion falls, yet the Grantee ſhall not have it Co. Comp. 48. S. 34.

3. There *ought to be a Cuſtom* to enable a Lord of a Manor to grant a Copyhold in Reverſion. Mar. 6. pl. 13. Paſch 15 Car. Anon.

Gilb. Treat. of Ten. 305. cites S. C. and ſays, If this be underſtood where Copyholds are only grantable for Life, it ſeems reaſonable enough; but where they have been granted in Fee, there if the Lord grant to one an Eſtate for Life, that he may not afterwards grant the Reverſion in Fee to another, ſeems very unreaſonable.

(P. 4) To whom Copyhold granted for his own Life, and the Lives of others ſhall deſcend, or go upon Death of Grantee.

1. A Took a Copyhold Eſtate *for the Life of himſelf and B. and C.* and . dies. His Son, who was neither of the Nominees, enters, enjoys, and dies inteſtate. J. S. adminiſtered to the Son. There is no Cuſtom in the Manor that the firſt Taker might ſurrender, nor have they any Cuſtom where the Copies run ſucceſſive. Lord Jefferies decreed for the Adminiſtrator. Vern. 415. pl. 394. Mich. 1686. Howe v. Howe.

This in Roll is Letter (R) in fol. 504.

[P. 5] Surrender *to an Uſe.* *Admittance.* [*And in what Caſes the Lord ſhall take as an Occupant &c.*]

S. P. by Walmſley. J. Cro. E. 442. in pl. 4.—Cro. C. 205. pl. 10. Mich. 6. Car. B. R

1. **If a** Copyholder in Fee ſurrenders to the Uſe of another for Life, **no more paſſes from him but what will ſerve the Eſtate limited in Uſe. Co. 9. Marg. Podger 107. per Coke.**

S. P. per. Cur. For in ſuch Caſe the Surrenderee is in Quaſi by the Copyholder, and by his Death the Copyholder ſhall have it again.

Ibid. ſays the Caſe was further, viz. that the Baron and Feme would releaſe all the Feme's Right to C. but the Lord would not receive it,

2. **If a** Baron ſeiſed in the Right of his Feme for Life of a Copyhold, **the** Reverſion **being granted** to B. **the** Remainder to C. for their Lives; **and the** Baron ſurrenders to the Uſe of B. for his Life, **to whom the Lord grants it for his Life, and ſo** he is admitted Tenant, and after dies, **in this Caſe the** Baron ſhall not have it again during the Life of his Feme, **inaſmuch as he hath diſmiſſed himſelf of it, and C. cannot have it during the Life of the Feme without the Surrender of the Feme, and therefore the** Lord ſhall have it as an Occupant **during the Life of the Baron. D. 9 El. 264. S. 38.**

nor hold a Court for that Purpoſe, that in Mich. Term after it was decreed, that the Lord hold a Court &c. or avoid the Poſſeſſion.—S. C. cited Cro. C. 205. —S. C. cited per Cur. 2 Keb. 824. in pl. 41 Mich. 23 Car. 2. B. R. in Peeble's Caſe.—Gilb. Treat. of Ten. 240, 241. cites S. C. that C. pray'd to be admitted, and *his Copy was cum acciderit poſt Mort' ſurſum-red' vel Foriſfac' of the Woman*; and it was the Opinion of the Juſtices, that he ought not to be admitted; but the Lord may retain it in his Hands as an Occupant. The Reaſon is, becauſe the Intereſt of the Feme was concerned, who had not ſurrendred; but there was this further in the Caſe, that Baron and Feme would have releaſed their Right to the Reverſioner, but the Lord would not hold a Court for it; but it was decreed in Chancery, that he ſhould either hold a Court or quit the Poſſeſſion.

Cro. C. 204. pl. 10. King againſt Lorde, S C. adjudg'd in B. R. for in ſuch Caſe of

3. **If a** Copyholder for Life ſurrenders **into the Hands of the Lord,** to the Uſe of J. S. **as after follows, and the Lord grants it after to J. S. to have to him for his Life, and** J. S. is admitted accordingly, and **after** dies, **in this Caſe** this ſhall not revert **to the firſt Copyholder for Life, for he hath wholly diſmiſſed himſelf by the Surrender, and therefore the Lord** ſhall have it, Mich. 7 Car. in Camera Scac-

Scaccarii, between *King* and *Loder*, adjudged in a Writ of Error; and the Judgment in B. R. which was there given accordingly per Curiam, upon Argument at the Bar, was now affirmed per Cur. præter Hutton, who inclined e contra, and *Vernon*, who doubted thereof.

a Surrender by Tenant for Life, the Surrenderee is merely in by the Lord, and not by the Copyholder who ſurrendered. —— *But if a Copyholder in Fee ſurrenders* to Uſe of another for Life, who is admitted, he is in Quaſi by the Copyholder, and upon his Death the Copyholder ſhall have it again; and ſays, that the Judgment in B. R. was affirm'd by all the Juſtices of C. B. and Barons of the Exchequer. Ibid. —— Same Diverſity taken, Arg' Poph 39. Hill 36 Eliz. in Caſe of Bullock and Dibler. ——— Jo. 229. pl. 3. S. C. adjudged —— S. C. cited by North Ch. J. Mod. 200. pl. 31. Paſch. 27 Car. 2. C. B. ſays this is to be underſtood of Copyholds in ſuch Manors where the Cuſtom warrants only cuſtomary Eſtates for Life, and is not applicable to Copyholds granted for Life with a Remainder in Fee —— Freem. Rep. 192. pl. 196. S. P. by North Ch. J. acccordingly. —— Gilb. Treat. of Ten. 240. cites the Caſe of King v. Loder. That if there be a *Copyholder for Life, and he ſurrenders to the Uſe of another for Life, who is accordingly admitted, and then dies*, yet the Surrenderor ſhall not be admitted again; for by the Surrender he paſſed away all his Eſtate, and had no Intereſt left in him. If the Surrenderor had died, it ſeems that the Eſtate of Tenant for Life was not ended, for then the Lord would have two Deaths to depend upon, either of which would bring him to the Eſtate, and yet but one Perſon that had an Intereſt.

(Q) Where the Eſtate granted ſhall be ſubject to the Incumbrance &c. of the Lord.

1. LORD and *Copyholder for Life*; the *Lord grants a Rent-charge* out of the Manor whereof the Copyhold is Parcel; the *Copyholder ſurrendreth to the Uſe of A. who is admitted*, he ſhall not hold the Land charged. 4 Le. 118. pl. 236. cites it as adjudged 10 Eliz. C. B.

2. If there be *Tenant by the Curteſy, or for Life or Years of a Manor*, and a *Copyhold comes to his Hands by Forfeiture or Determination*, and afterwards he *binds himſelf in a Statute, and then demiſes the Copyhold Land again, this Copyhold* ſhall be liable to the Statute, becauſe it *was once annexed to the Freehold of the Lord*, and bound in his Hands. Mo. 94. pl. 233. Paſch. 12 Eliz. Anon.

3. *Lord and Copyholder for Life*; the *Lord grants a Rent out of his Manor* whereof the Copyhold is Parcel, the *Copyholder ſurrenders to the Uſe of A. who is admitted* accordingly, he ſhall not hold it charged; but if the *Copyholder dies*, ſo that his Eſtate is determined, and *the Lord grants to a Stranger de novo to hold* the ſaid Lands *by Copy*, this new Tenant ſhall hold the Land charged; and ſo was it ruled and adjudged in C. B. Le. 4. pl. 8. Mich. 25 & 26 Eliz. Anon. cites it as adjudged 10 Eliz. Supplement to Co. Comp. Cop. 87. S. 21. cites S. C.

4. In a Replevin; the Caſe was, that Henry, Earl of Weſtmorland, was ſeiſed of the Manor of Kennington in Fee, and *granted a Rent-charge* to Wm. Cordell, afterwards Maſter of the Rolls, *for Life*, and *afterwards a Feoffment thereof to Sir John Clifton, who granted a Copyhold* to Sands *for Life, according to the Cuſtom* of the ſaid Manor, *the ſame being an ancient Copyhold*. Sir John died ſeiſed; the Rent is behind; Sir Wm. Cordell died; Hempſton as Bailiff of Cary, Executor of Sir Wm. Cordell diſtrain'd for the Arrearages upon the Poſſeſſion of Sands, and it was clearly holden by the whole Court, that the Poſſeſſion of the ſaid *Copyholder was not chargeable to diſtreſs* upon this Matter, for the Copyholder is not in by him who ought immediately to pay the Rent, but is alſo *in by the Cuſtom*. 2 Le. 109. Trin. 27 Eliz. B. R. Sands v. Hempſton. Supplement to Co. Comp. Cop. 87 S. 21. cites S. C. — But quære that Caſe, and vide Hill. 18 Eliz. C. B. the Earl of Weſtmorland's Caſe; for there *the Caſe was, that the Demeſnes* of a Manor *were uſually let for Lives by Copy, and the Lord granted a Rent-charge to J D. pro conſilio impendendo for Life, and afterwards conveyed the Manor to J N. in Tail*. The Rent was behind, and the Grantee of the Rent died, and the *Executors of the Grantee diſtrained for the Arrearages*; and there it was adjudged, that

that the Copyholder ſhould hold the Lands charged, Supplement to Co. Comp. Cop. 87. S 21. cites 3 Le. 59. Hill. 18 Eliz. C. B. Earl of Weſtmorland's Caſe.—— 2 Le. 152. pl. 185. the Executors of Cordel v. Clifton. S. C. in totidem Verbis. — 3 Le. 59 S. C. in totidem Verbis. ——— Gilb. Treat. of Ten. 174. cites S. C. of Sands v. Hempſton, and ſays, that that Opinion, as it ſeems, was upon the firſt Hearing of the Cauſe, for the very Caſe is reported quite contrary by the ſame Reporter; and it is ſaid to be reſolved by all the Judges but Fenner, that the Copyhold ſhould be charged with the Rent-charge, *for the Cuſtom is no Part of his Title, but only appoints how he ſhall hold*; and ſince it was charged in the Lord's Hands, it is plainly within the Intent and Meaning of the Act, as well as the Words to be charged in the Copyholder's Hands, and to this Purpoſe there is a Caſe in Dyer adjudged; but if the Caſe were adjudged, that the Lands ſhould not be charged in the Copyholder's Hands, on that Reaſon, that he doth not claim only by and from &c. but by Cuſtom, yet that would never warrant ſo general a Concluſion, that the *Statute* 32 *H.* 8. *cap* 37. in no other Part ſhould extend to Copyholds, and that if a Rent were granted out of a Copyhold in Fee, and the Grantee died, that his Executors ſhould not have Debt or diſtrain; but turn the Tables, and if the Act of Parliament doth in Point extend to Copyholds, as Lands that are claimed by &c. and that which in this Caſe only doth make a Doubt is over-ruled, then this is a ſtrong Argument, that in other Caſes where that is not, which occaſioned the Doubt, the Statute ſhall extend to Copyholds, eſpecially ſince the Act was made to remedy an apparent Wrong, and doth no Harm either to Lord or Tenant.

5. Lord of a Manor, where Copyholders are for Life, grants a *Rent-charge out of all the Manor*; a Copyhold *eſcheats*, the Lord *regrants* it by Copy; per Omnes, niſi Fenner J. he ſhall not hold it charged, becauſe he comes in above the Grant, i. e. by the Cuſtom; the ſame Law of *Statutes, Recognizances, Dowers*; but the 10 Eliz. D. 270. per tot. Cur. he ſhall hold it charged, but 2 Brownl. 208. 5 Jac. C. B. in Caſe of Sammer v. Force, ſays this has been denied in Caſe of Swain v. Becket.

6. It ſeemed to Coke Ch. J that if a Copyholder be *of* 20 *Acres, and the Lord grants Rent out of thoſe* 20 *Acres* in the Tenure and Occupation of the Copyholder and *names him*, there if this Copyhold *eſcheat*, and be granted again, the Copyholder ſhall hold it charged; for that 'tis now charged by expreſs Words. 2 Brownl. 208. Trin. 5 Jac. C. B. in Caſe of Sammer v. Force.

Gilb. Treat. of Ten. 189. cites S. P. as ſaid by Lord Coke, but

7. If the *Lord* of a Manor *acknowledges a Statute, and then grants Lands by Copy*, and *afterwards the Manor is delivered to the Cognizee in Extent*, the Grant cannot by this be impeach'd. Co. Comp. Cop. 47. S. 34.

ſays Moor [Mo. 94. pl. 233. Paſch. 12. Eliz. Anon.] is againſt this, and that there are Caſes where the Grant of a Rent charge, in ſuch Caſe, ſhall bind the Copyholder; but there is ſome *Difference* between the 2 Caſes; for in Caſe of a *Rent*, the Lands were only chargeable, and before the actual Charge, were granted over; (vide Mo. 811.) and therefore may be compared to the Caſe where a * Man makes voluntary Grants, his Wife ſhall not be endowed of thoſe Lands, becauſe the Copyholder is in by the Cuſtom, which was long before the *Title of Dower* accrued to the Woman. It ſeems the Reaſon of this Caſe is, becauſe the Woman had no Title of Dower to thoſe Copyhold Lands while were in the Hands of Copyholders, and the Cuſtom warrants the granting them again, ſince they have been always grantable by Copy, and the Eſtate would be deſtroyed if ſhe were dowable of them; Quære of the Caſe of the Statute; † but if the Heir before Aſſignment of Dower grants Lands by Copy, then it ſeems ſhe may avoid that; for ſhe had then a perfect Title of Dower to thoſe Lands.

* Co. omp. Cop. 47. S. 34. S. P.

† Co. Comp. Cop. 47. S. 34. S. P.

8. Thoſe *Things which take the Eſſence by the Lord's Grant and Intereſt have no longer Continuance than his Intereſt has*, and therefore if the *Lord, Tenant for Life of a Manor, licences the Copyholder to alien, and dies*, the Licence is gone. Gilb. Treat. of Ten. 190.

9. *Grants made after Alienation in Mortmain, and before the Entry of the Lord*, are good. Gilb. Treat. of Ten. 190.

10. The *King grants a Manor in Fee-farm*; the Lands and Goods of *Copyholders are not liable to the Rent*, becauſe they come in by Preſcription, which is before the Rent. Gilb. Treat. of Ten. 310.

[R] What Act or Thing will hinder, or *deſtroy the Power to grant* by Copy.

This in Roll is Letter (B) in fol 498.

1. IF the King be ſeiſed of a Manor, of which Black-Acre is Parcel, and demiſable by Copy in Fee, and this comes to the King either by Eſcheat or Surrender, and after the King leaſes the ſaid Black-Acre to J. S. for Life, not taking Notice that it was demiſable by Copy, this is a good Grant, though the King did not know that it was demiſable by Copy, and by Conſequence it will deſtroy the Power to grant it by Copy at any Time after, ſo that the King, or any other Lord of the Manor, cannot grant it by Copy after. M. 15 Car. B. R. between *Douncliffe* and *Minors*, per Curiam, reſolved upon Evidence at the Bar, but they directed the Jury to find a ſpecial Verdict, and the Jury gave a general Verdict againſt their Direction.

See tit. Prerogative (G. c) pl. 3. 4. Cremer v. Burnet, and the Notes there.

2. If a Copyhold in Fee comes to that Lord by Eſcheat or Surrender, yet there is no Impediment, but the Lord may after grant it again by Copy. M. 15 Car. B. R. between *Douncliffe* and *Minors*, per Curiam, upon Evidence at the Bar.

And ſo may the Steward ex officio where it eſcheats to the Queen by Cuſtom, and Attainder of Felony, and that without any Special Warrant; For it is warranted by the Queen, her Heirs and Succeſſors are bound by it; But he ought in Duty to inform the Lord Treaſurer &c. for his better Direction. 4 Rep. 30. a. pl. 2. Trin. 41. Eliz. B R. the 2d Reſolution in the Caſe of Harris v. Jays.—Cro. E. 699. pl. 13. S. C. adjudged —— If a Copyhold eſcheats to the Lord, and he keeps it ſeveral Years in his Hands, during this Time it is not demiſed but demiſable; For the Lord has Power to demiſe it again. Co Litt. 58. b.— 4 Rep. 31. pl. 24. Mich. 18 & 19 Eliz. B. R. in French's Caſe, S. P. and ſo if he leaſes at Will only.——Gilb. Treat. of Ten. 208, 209 S. P.—S. P. agreed by the Juſtices, 3. Le. 108. pl. 158. Trin. 26 Eliz. B. R. in Caſe of Taverner v. Cromwell.—Co. Comp. Cop. 66. S. 62. S. P.

3. [But] if a Copyhold comes into the Hands of the Lord in Fee by Eſcheat or Surrender, and the Lord leaſes it by Parol for one Year, or half an Year, or for any certain Time, it can never be granted by Copy after, but this Power to grant by Copy is wholly deſtroyed. M. 15 Car. B. R. between *Douncliffe* and *Minors*, per Curiam, upon Evidence at the Bar reſolved.

S. P. 4 Rep. 31. a. pl. 24. Mich. 18 & 19 Eliz. B. R. French's Caſe.—If in ſuch Caſe the Lord grants away Eſtate by Deed, it is an Extinguiſhment. Co. Comp. Cop. 66. S. 62. S. P.——Gilb. Treat. of Ten. 208. S. P. becauſe during thoſe Eſtates it was not demiſed or demiſable by Copy.

4. A *tortious Interruption*, as if the *Lord is diſſeiſed, and the Diſſeiſor dies ſeiſed*, or if the Land be *recovered by falſe Verdict*, or erroneous Judgment againſt the Lord, tho' during the Recovery, or before the Judgment reverſed, the Land was not demiſed or demiſable, yet after Recontinuance it is grantable again by Copy. 4 Rep. 31. a. pl. 24. Mich. 18 & 19 Eliz. B. R. in French's Caſe.

Supplement to Co. Comp. Cop. 82. S. 16. S. P. —— Gilb. Treat. of Ten. 209. cites S. C. and ſays, that ſo it ſeems if the Diſſeiſor had made a Feoffment in Fee.

5. If Land *forfeited or eſcheated is extended* upon a Statute, or Recognizance acknowledged by the Lord before any new Grant made, or if the Feme of the Lord in Writ of *Dower* has this Land aſſigned to her, though theſe Impediments are *Actions in Law*, yet in as much as theſe are *lawful Interruptions*, the Land can never be granted again by Copy. 4 Rep. 31. a. pl. 24. Mich. 18 & 19 Eliz. B. R. in French's Caſe.

Co. Comp. Cop. 66. S. 62. S. P.—— Supplement to Co. Comp. Cop. 82. S. 16 S. P.— Gilb. Treat. of Ten. 209. S. P. and cites S. C.

6. A Copyholder in Fee *married the Seignioreſs*, and after they ſuffered a *Common Recovery*, which was to the Uſe of themſelves for Life, Remainder over; held per 3 J. that the Copyhold was extinct, for by the Recovery the Baron had gained an Eſtate of Freehold. But all held that the *Intermarriage only ſuſpended it.* Cro. E. 7. Trin. 24 Eliz. B. R. Anon.

7. Tenant by Copy in Poſſeſſion *releas'd to the Grantee of the Freehold of the Copyhold* all his Right in the Land; per Anderſon Ch. J. this does not extinguiſh the Copyhold. Cro. E. 21. Trin. 25 Eliz. C. B. Anon.

2 Roll 271. pl. 1, 2. S. C. by name of Ruſley v. Coningsby. — The ſame of *Tenant in Tail* of ſuch Manor. 2 Roll 271. pl 3. P. 38 Eliz. B. R. per Cur. —— So of a *Biſhop*, or of *the King*, or of a *Tenant for Years* of a Manor, 2 Roll 197. Prærogative. (G. c) p. 3. —— *So* of an *Infant* Ibid. —— Gilb. Treat. of Ten. 283. cites S. C. and ſays, that by the ſame Reaſon it ſeems that the Heir may demiſe it again by Copy; and ſo if a Tenant for Life of a Manor leaſes a Copyhold, Parcel of the Manor, for Years, and dies, this ſhall not deſtroy the Cuſtom as to him in Reverſion.

8. *Baron ſeiſed of a Manor in Jure Uxoris leaſes* a Copyhold, Parcel thereof, *for Years by Indenture*, and dies, this deſtroys not the Cuſtom as to the Feme, but that after the Death of her Baron ſhe may demiſe it by Copy as before; ſo of *Tenant for Life* of a Manor, if he lets a Copyhold, Parcel of the Manor for Years, and dies, it ſhall not deſtroy the Cuſtom as to him in Reverſion; per Popham and Fenner Juſtices upon Evidence. Cro. E. 459. (bis) pl. 7. Paſch. 38 Eliz. B. R. Coningsby v. Rusky.

Co. Comp. Cop. 66. S. 62. S. P. —— S. P. 4 Rep. 31. in French's Caſe. — Gilb. Treat. of Ten. 208. S P. —— But if he *grants Eſtate for Life only* he may afterwards grant the Fee by Copy, according to the Cuſtom. [But it ſeems it is meant of a Grant for Life by Copy.] Le. 56. pl. 70. Paſch. 29 Eliz. B. R. in Caſe of Kemp v. Carter. —— *So* if Copyhold *eſcheats* to the Lord, and he aliens the Manor by Fine, Feoffment, or otherwiſe his Alienee may regrant the Land by Copy, for it was always demiſed or demiſable. 4 Rep. 31. b. pl. 24. Mich. 18 & 19 Eliz. B. R. in French's Caſe. —— But if the Lord keeps the Land in his Hands for a long Time, he or his Heirs or Aſſigns may regrant it by Copy at his Pleaſure. Ibid. 31. a.

9. If a Copyhold *eſcheats*, and the *Lord makes a Feoffment in Fee on Condition*, and enters for the Condition broken, it ſhall never be Copyhold again, becauſe the Cuſtom or Preſcription (which was the Cauſe of the Tenure and ſupported it) is interrupted, and that being once broken is become remedileſs. C. L. 202. b.

See Tit. Prerogative (G c.) pl. 2, 3. and the Notes there. 10. A *Biſhop or Tenant in Tail* &c. *lets Copyhold Lands by Deed indented*; the Iſſue or Succeſſor may grant this by Copy again, yet they may make Leaſes according to the Statute to bind. Gilb. Treat. of Ten. 311.

4. Rep. 31. French's Caſe. 11. Copyholds muſt be always *demiſed or demiſable.* Arg. Hard. 98. cites D. 30.

Adjudged that if the Lord makes Leaſe for Years, or for Life, or other Eſtate *by Deed, or without*, it can never be granted again by Copy. 4 Rep. 31. French's Caſe. —— And by the ſame Reaſon a *Releaſe* upon that Leaſe will paſs the Freehold and Inheritance to him. Gilb. Treat. of Ten. 209. 12. If a *Leaſe* for Years be granted of the Copyhold it ſelf *by Dominus pro Tempore, or for half a Year*, it deſtroys the Copyhold. Cro. C. 521. pl. 22. Mich. 14 Car. B. R. in Caſe of Lee v. Boothby.

Jo. 449. S. C. but that is of a Grant *by Letters Patents* and held, that it deſtroyed 13. If a Leaſe be made of the *Manor, and of a Copyhold by expreſs name*, yet this will not extinguiſh the Copyhold, though it was before the Leaſe ſurrendered to the Lord, for when he leaſes the Manor *it is included as a Parcel of the Manor*, and the *naming the Copyhold is ſurpluſage*, and it remains always as Parcel, and is demiſable by Copy as it

was

was before. Cro. C. 521. pl. 22. Mich. 14 Car. B. R. Lee v. Boothby.

the Power of Granting. Gilb. Treat. of Ten. 209. cites S. C. — Co. Comp. Cop. 66. S. 62. S. P.

14. But if he, though he had been but Dominus pro Tempore, or for half a Year (though by Parol) had made a *Leaſe for Years of the Copyhold itſelf*, it had deſtroy'd the Copyhold, for it was then during the Time *ſevered from the Manor*, and ſo could never afterwards be demiſable again by Copy. Cro. C. 521. pl. 22. Mich. 14 Car. B. R. Lee v. Boothby.

On Lee and Boothby's Caſe it was ſaid by Hale Ch. J. that a *Leaſe for Years* of Lands that are Copyhold, particularly *without taking Notice it was Copyhold*, is good for the Rent of the Copyholder, and after the Leaſe ſpent, the Inheritance takes Place and ſevers the Copyhold from being granted by Copy after during the Leaſe, but when that is ſpent it is Parcel again, which was agreed in Evidence to the Jury at Bar, in an Ejectment on Sir George Sandy's Patent, and Verdict for the Defendant. 3 Keb. 91. pl. 33. Mich. 24 Car. 2. B. R. Cholmley v. Cooper and Ward.

15. If a Copyholder *purchaſes the Manor*, he may grant the Copyhold again; but if he *puts the Copyhold from the Freehold* 'tis gone. Cart. 24. Paſch. 17 Car. 2. C. B. per Bridgman Ch. J. in delivering the Reſolution of the Court, in Caſe of Taylor v. Shaw.

16. If *Copyholder ſurrenders* to the Lord *without declaring any Uſe*, the Copyhold extinguiſhes, as on a Surrender by Tenant for Life to him in Reverſion; per Holt Ch. J. Wms's. Rep. 17. Hill. 1700.

17. The Cuſtom of a Manor was to grant for 3 *Lives Habend' ſucceſſive ſicut nominantur*; a Grant is made to A. B. and C. *A. purchaſes the Manor*, and the Queſtion was, whether there being a Cuſtom giving Power to fruſtrate the 2 Remainders by Surrender A. by his Purchaſe had extinguiſhed them? but held to be no *Merger* or *Extinguiſhment* of the Eſtate between the *Cuſtom of deſtroying the Remainders* is confined to the Formality of a *Surrender*, and the Purchaſe of the Manor, though it be between the Parties a Surrender, yet it ſhall not be conſtrued as ſuch to other Purpoſes, viz. to deſtroy the Remainders; per Cur. 6 Mod. 67. Mich. 2 Ann. B. R. in Caſe of Smartle v. Penhallow.

(S) Grant &c. How; Where the Inheritance is ſevered from the Manor. How it ſhall be, and what ſhall be done.

1. IF the Lord of a Copyhold Manor makes a Feoffment of a Parcel of his Manor which is holden by *Copy for Life*, and afterwards the *Copyholder dies*, though now the Lord has not any Court, yet the *Feoffee may grant over* the Land *by Copy again*; per Ayliff J. Le. 289. pl. 394. Trin. 26 Eliz. in Lord Dacres's Caſe.

2. Where the Inheritance of a Copyhold is ſever'd from the Manor, as by being granted to a Stranger, the Copyholder *cannot ſurrender or deviſe* the ſame, but that it *ſhall deſcend to his Heir*; for ſuch Surrender after the Severance of the Inheritance from the Copyhold is void, becauſe the Lands were not Parcel at the Time of the Surrender, and a Deviſe only cannot transfer ſuch cuſtomary Eſtate; for there can be no transferring but by Surrender into the Hands of the Lord according to the Manor. 4 Rep. 24. b. pl. 10. Mich. 33 and 34 Eliz. B. R. Murrel v. Smith.

S. C. cited Gilb. Treat. of Ten. 194, 195.

4. After the Severance the Copyholder *ſhall pay his Rent to the Feoffee*, and ſhall pay and do all other *Services* which are due without Admittance

Cro. E. 252. pl. 20. S. C. & S. P. held,

and Fenner J. ſaid, that he might ſurrender his Eſtate to the Grantee of the Freehold, to the Uſe of the Grantee, becauſe he had the Reverſion, but that he could not ſurrender to the Grantee to the Uſe of another, nor the Grantee cannot grant it by Copy to another, ſo that the Copyholder muſt always keep it in his Hands; but quære of this; and the other Juſtices gave no Opinion of this Point. —— Ibid. ſays the Court held, that though the Heir may enter without Admittance, yet he ſhall pay his uſual Fine, and do all his Services, except Suit at Court. —— Gilb. Treat. of Ten. 196. cites S. C. of Cro. as to the Fine, and asks how that can be when there is no Admittance? —— 4 Le. 230. S. P. but held, that Heriots, and ſuch other Caſualties, are gone. Bell v. Langley.

or holding of any Court, as plowing the Demeſnes of the Lord, Heriot &c. But Suit of Court, and Fine on Alienation or Admittance are gone; for now the Land or Tenement may be alien'd; for as the Copyholder has ſome Benefit by his Severance as appears before, ſo has he great Prejudice, for now he * cannot ſurrender or alien his Eſtate, becauſe he cannot alien it but by *Surrender in Manus Domini ſervitiorum* as the Cuſtom has warranted, and this he cannot do, nor the Feoffee cannot make Admittance or Grant of the Copyhold, for he is not Dominus pro Tempore. Ibid. 25. a.

4 But 'twas reſolv'd, that ſuch *Forfeitures* as were Forfeitures *before the Severance*, as making of Feoffment or Leaſe, Waſte, Denying of Rent &c. are Forfeitures alſo after Severance; ſo if the Land was of the Nature of Borough Engliſh or Gavelkind before the ſame Cuſtom, all other *Cuſtoms which run with the Land ſhall remain after Severance.* Ibid. 25. a.

* He may ſurrender to the Grantee of the Freehold to the Uſe of the Grantee; per Fenner J. Cro. E. 252. pl. 20. S. C & S. P. —— Ibid. 499. S. P. by Popham and Clench.

S. C. & S. P. cited Gilb. Treat. of Ten. 165, 196. and ſays, that ſo it is, if the Land were of the Nature of Borough-Engliſh it ſtill remains ſo; and there is no way for ſuch a Copyholder to alien but by Decree in Chancery againſt him and his Heirs.

5. If ſuch Copyholder will *alien, it muſt be by Decree in Chancery* againſt him and his Heirs, but by this the Intereſt of the Land is not bound but the Perſon only. 4 Rep. 25. Murrell v. Smith.

6. If the *Lord grants a Copyholds and after Severs this Copyhold from the Manor, by granting the Inheritance to a Stranger*, though now one of the chief Pillars of a Copyhold Eſtate is wanting, viz. to be Parcel of the Manor, yet becauſe the Land at the Time of the Copyholder's Admittance had this neceſſary Incident, *this Severance, being a Matter ex poſt Facto, cannot amount to the Deſtruction of the Copyhold*, eſpecially *being the ſole Act of the Lord himſelf.* Co. Comp. Cop. 46. S. 34.

(T) Decrees in Equity as to the Heads foregoing, relating to Grants of Copyholds.

1. THE Father *ſettled a Manor, reſerving only an Eſtate to himſelf for Life, Remainder in Tail to his Son*, He after *marries a ſecond Wife*, and *ſettles Part of the ſame Manor on her*, and then died, *ſhe ſurviving* who enjoyed it for the greateſt Part of her Life, during which Time ſhe *granted ſeveral Copyhold Eſtates* to the Tenants, who enjoyed the ſame under ſuch Grants, and particularly a Copyhold Eſtate to one A. for his Life, and after his Death ſhe granted *the Reverſion to the Plantiff.* Not long before her Death *the Son*, as Tenant in Tail, *brought an Ejectment againſt her*, but *confirmed the Eſtates* which ſhe had granted to the Tenants by *ſigning their Copies*, but *refuſed to admit the Plaintiff* upon the Grant of the Reverſion. Decreed, that in regard A. had enjoyed it all his Life-time, and that the Defendant, the Son, had confirmed the Eſtates of the other Tenants, the Plantiff ſhould be admitted, and

and hold his Eſtate likewiſe, according to the Grant made by the Widow. N. Ch. R. 32. Lippiat v. Nevill.

2 A. poſſeſſed of Copyhold Lands for one Life in Poſſeſſion, and three Lives in Reverſion, died, leaving E. his only Daughter, who was the only Survivor, and married J. S. who contracted with the *Biſhop of W. Lord of the Manor, after the Reſtoration*, for two Lives in Reverſion for 40 l. and was admitted and held the ſame after his Death for ſeveral Years. *This Manor in the Rebellion was granted to Corbet*, and *Corbet's Widow now pretends a Right and ſays that Biſhop Thornbury (the Biſhop before the Rebellion) granted the Premiſſes for three Lives in Reverſion* after E's Death *to W. R.* one of whom has lately obtained a Verdict in Ejectment, but *J. S. ſuggeſts, that W. R's Copy* (if any ſuch was) *was ſurrendred* by Letter of Attorney, *at a Court held by Corbet, in the late Uſurpation*, and a *new Eſtate granted for Lives in Reverſion who are ſince dead*, but that Defendants having got the Court Rolls, Letter of Attorney, and Surrender, do conceal the ſame; The Court directed a new Trial, and the Defendants to produce the Letter of Attorney and Surrender made by W. R. and the Injunction to continue to quiet the Plantiff's Poſſeſſion till Trial had, and the Plantiff to give Security to be approved by the Maſter to anſwer the meſne Profits to Corbet's Widow, in Caſe the Verdict ſhould go againſt him. Fin. R. 41. Mich. 25 Car. 2. Pitt v. Corbet & al'. Fin, R. 80.

3. *A ſeiſed of a Copyhold* in the Manor of D. *ſells to B. B. purchaſes the Manor*, and *by a Particular in which this Copyhold was not included, B. ſells the Manor to C.* the Copyhold was 25 l. per Ann. and C. never claimed it in ſix Years, but then claimed it and recovered at Law, it paſſing as Part of the Manor; per Lord K. tho' the Particular given in by B. to C. was much beyond the Value; yet ſince C. neither treated for this Copyhold, and other ſmall Parcels of 20 l. 10 s. &c. value &c. as in B's Particular and Conveyance, this 25 l. per Ann. would not have been omitted if C. intended to buy it, or B. to ſell it, and decreed for B. but B. to pay the Rent Arrear, and for the future hold it in all reſpects ſo as Copyhold ſubject to Forfeiture, and uncertain Fine &c. as it was before the Regrant to him by Copy &c. 2 Chan. Caſes 194. Paſch. 26 Car. 2. Taylor v. Beverſham. S. C.

4. A. Tenant by Copy to him and the *Heirs Males of his Body purchaſed the Fee-ſimple* to him and his Heirs, and afterwards for a valuable Conſideration, viz. 300 l. *ſold to B.* who was in Poſſeſſion ſeveral Years, and died, leaving C. a Son. Ld. Chancellor thought the Conveyance good againſt the Heir; for the Copyhold being *ſevered from the Manor*, there is no Means to bar it but by Conveyance at Common Law; the Entail is not within the Statute of W. 2. but Ld. Chancellor took Time to adviſe. 2 Chan. Caſes 174. Hill. Jac. 2. Barker v. Turner. Jeffries C. ſeemed to make little Doubt but that the Copyhold was *merged* tho' it was ſaid this Point was depending on a ſpecial Verdict at Law. Vern. 458, Parker v. Turner.

(U) Surrender. What it is, and how conſidered.

1. A Surrender *is a Thing executory*, which is *executed by the ſubſequent Admittance*, and nothing at all is inveſted in the Grantee before the Lord has admitted him according to the Surrender, and therefore if at the Time of the Admittance the Grantee be in Rerum Natura, and able to take, that will ſerve. Co. Comp. Cop. 50. S. 35.

Gilb. Treat. of Ten. 294. cites this saying of Lord Coke; but seems e contra.

2. This word (Surrender) *is Vocabulum Artis*, and therefore where a Surrender is needful, if this one Word be wanting, *all other Words used in ordinary Conveyances are ineffual* and insufficient *to convey any Copyhold Estate*; for if a Copyholder comes into Court, and offers to pass his Copyhold by Word of Grant, of Gift, of Bargain or Sale, or such like, I doubt he will fail of his Purpose, for as he is tied to a singular Form of Assurance, so is he restrained to peculiar Words in his Assurance. Co. Comp. Cop. 51. S. 39.

3. A Surrender *(where by a subsequent Admittance the Grant is to receive his Perfection* and Confirmation) *is rather a manifesting the Grantor's Intention, than of passing away any Interest in the Possession*, for till Admittance the Lord takes Notice of the Grantor as Tenant, and he shall receive the Profits of the Land to his own Use, and shall discharge all Services due to the Lord; but yet *the Interest is in him, but secundum quid*, and not absolutely; for he cannot pass away the Land to any other, or make it subject to any other Incumbrance than it was subject to at the Time of the Surrender, neither in the *Grantee* is any Manner of Interest invested before admittance; for if he *enters he is a Trespassor*, and punishable in Trespass, *and if he surrenders to the Use of another, this Surrender is merely void*, and by no Matter ex post Facto can be confirmed; for though the first Surrender can be executed before the second, so that at the Time of the Admittance of him to whose Use the second Surrender was made, his Surrenderor has a sufficient Interest as absolute Owner; yet because at the Time of the Surrender he had but a Possibility of an Interest, therefore the subsequent Admittance cannot make this Act good which was void ab initio. But though the Grantee has but a Possibility upon the Surrender, yet this is such a possibility as is accompanied with a Certainty, for the Grantee cannot possibly be deluded or defrauded of the Effect of his Surrender, and the Fruits of his Grant, for if the Lord refuse to admit him, he is compellable to do it by a Subpœna in Chancery, and the Grantor's Hands areever bound from the disposing of the Land any other way, and his Mouth ever stopped from revoking or countermanding his Surrender. Co. Comp. Cop. 51. S. 39.

Surrender of a Possibility enures by way of Grant; per Coke Ch. J. Roll R. 318. in Case of Lane v. Pannell.

4. Surrender *is but in Nature of a Deed-Poll* rather than an Indenture, and enures by way of Limitation of Use; Arg. Saund. 151. Pasch. 20 Car. 2. in Case of Wade v. Bache.

This in Roll is Letter (E) in fol. 499.

(W) Copyhold.
(*Surrender.*)
At what *Time*.

Cro. E. 662. pl. 11. Colchin v. Colchin, S. C. and ruled good.

1. IF there be Baron and Feme Copyholders to them and the Heirs of the Baron, and the Baron dies, the Heir of the Baron may surrender his Reversion into the Hands of two Tenants of the Manor out of the Court, who by the Custom have Power to take Surrenders before Admittance, and during the Life of the Feme; and this is a good Surrender, for the Reversion was cast upon him by Descent before any Admittance. P. 41. Eliz. B. R. between *Calchin* and *Calchin*, adjudged.

2. The *Heir before Admittance* may surrender to the Use of another. 4. Rep. 22. b. the 3d Point in Brown's Case.

3. After

3. After the Death of Tenant for Life *he in Remainder* may, *without any Admittance* ſurrender the ſame Land; for the firſt Admittance was ſufficient. 4. Le. 111. pl. 226. in Time of Q. Eliz. Hegger v. Felſton.

4. If a Copyholder in Fee *ſurrenders to the Uſe of B.* and his Heirs, *B. before Admittance cannot ſurrender to the Uſe of another*, for before Admittance B. had nothing, and his Copy, upon which he is admitted, is his Evidence by the Cuſtom, and before that he is no cuſtomary Tenant, ſo he can transfer nothing to another; adjudged. Yelv. 144, 145. Mich. 6 Jac. Wilſon v. Weddal.

5. The *Heir may ſurrender* before Admittance; Arg' 3 Lev. 327. Hill. 3 W. & M. in C. B. Glover v. Cope.

S. P. becauſe he is in by Courſe of Law, for the Cuſtom, which makes him Heir to the Eſtate, caſts the Poſſeſſions of his Anceſtors upon him. Yelv. 145. Mich. 6 Jac. B. R. in Caſe of Wilſon v. Weddal.——1 Brownl. 143. S. C. adjudg'd but it ſeems to be only a Tranſlation of Yelv. ſo where a Surrender was to A. for Life and after to the Uſe of B. in Fee; A. was admitted and died; B. may ſurrender without any new Admittance. 4 Le. 111. pl. 226. in Time of Q. Eliz. Hegger v. Felſton.

[X] Copyhold.

Surrender.

At what *Place*.

This in Roll is Letter (F) in ſol. 500.

1. **A Copyholder may ſurrender** into the Hands of the Lord of Court, **without a particular Cuſtom to warrant it. Co. Lit. 59. a. b. Contra Co. 9. 76. b.**

In 17 Eliz. C. B. it was ſaid by Dyer and Mounſon, that without a Preſcription a Surrender of Copyhold Land could not be out of Court, nor an Admittance out of Court, neither to the Lord himſelf nor to his Steward, but in divers Places it is uſed by Cuſtom ſo to be, and there upon the doing of Fealty, and the paying of the Lord's Fine, ſhall be preſented by the Homage to be done at the next Court, and all theſe things they ſaid are to be done by the Cuſtom, and in that Caſe it was ſaid by the Lord Dyer, that a Surrender out of Court might be to the Lord himſelf, to go by way of Extinguiſhment. Supplement to Co. Comp. Cop. 69. S. 3.

2. But **he** cannot **ſurrender to the Lord** into the Hands of Tenants, or the Reeve, **or others out of Court**, without a particular Cuſtom. **Co. Lit. 59.**

A Copyholder in Fee did, according to the Cuſtom of the Manor, ſurrender his Copyhold Lands into the Hands of two Tenants, but the Surrender was to the Uſe of J. S. to take Effect immediately after his Death. In this Caſe it was reſolved, that as unto the Surrender into the Hands of two Tenants, that might be good, altho' it was out of Court, by Cuſtom. Co. Comp. Cop. 65. S. 3.

3. **The** Steward **of the Manor** may take **a Surrender of a Copyhold** out of the Manor. **Mich. 13 Jac. B. R. between** *Houſego* **and** *Wild*, **per Curiam.**

S. P. accordingly, tho' he was retained by Parol only. 4 Rep. 30. b. pl. 21. Holcroft's Caſe.— Le. 227. pl. 309. Blagrave v. Wood, S. C. Paſch. 33 Eliz. C. B. ſed adjornatur.——— But held per tot. Cur. contra Godb. 142. pl. 175. Trin. 31 Eliz. C. B. Blagrove v. Wood.—Ld. Raym. Rep. 76. Paſch 8 W. 3. Tukeley v. Hawkins, reſolv'd that a Steward of a Manor may take a Surrender of a Copyhold out of the Manor, but cannot admit out of the Manor, and that a Cuſtom that the Steward ſhall not take Surrenders out of the Manor is a void Cuſtom.——Ld. Raym. Rep. 159 S. C. cited by Powell J. and ſaid, that a Steward by Parol cannot take Surrenders out of Court.

4. Steward of a Manor made a *Commiſſion* to one *to take a Surrender in Ireland* of a Copyholder who was there, and it was holden a good Surrender; cited by Manwood. 4 Le. 111. pl. 226. in Time of Q. Eliz.

5. The *Steward* of the Court *of a Manor in Ireland being in England, ſent a Writ in the Nature of a Dedimus poteſtatem to one who* was *in Ireland, to take a Surrender there of Copyhold Lands*; and the Opinion of the Judges here, to whom the Caſe was referred to adviſe, and certify their Opinion, was, that ſuch a Surrender taken by Dedimus was good enough; *But* note, that in ſuch Caſe it muſt be intended, that ſuch giving Power to take a Surrender, if it be to be done, *it muſt be alledged to be done either by Preſcription or Cuſtom*; for that Surrenders generally taken out of Court muſt be by Cuſtom. Supplement to Co. Comp. Cop. 68. S. 3.

2 Roll Rep. 327. S. C. but D. P.

6. *Baron and Feme Copyholders in Right of the Feme ſurrender out of Court into the Hands of the Steward*, and ſhe was examined by him. Tho' in an Ejectment brought it was not proved, that he was Steward by Patent, nor that there was any ſpecial Cuſtom to warrant it, yet it was reſolv'd per tot. Cur. to be good; and Mountague ſaid he had known it ſo adjudg'd. Cro. J. 526. pl. 2. Paſch. 17 Jac. B. R. Smithſon v. Cage.

Comyns's Rep 84, 85. pl. 52. S. C. reſolv'd, that the Surrender was good. — See Tit. Steward of Courts. (K) pl. 1.

7. Where a *Steward* of a Manor *has a Power to make a Deputy*, and he *makes B. his Deputy*, and *B. by writing under his Hand and Seal make C. and D. his Deputies, jointly and ſeverally to take a particular Surrender* only, *D. took the Surrender out of Court to the Uſe of the Surrenderors Will.* Per tot. Cur. this is a good Surrender. Ld. Raym. Rep. 658. Paſch. 13 W. 3. B. R. Parker v. Kett.

8. Steward of a Copyhold Manor *may without Cuſtom take Surrenders out of Court*, for *he has the Power of the Lord*, and the Lord may do it; & per tot. Cur. there is as much Reaſon that the Steward ſhould take Surrenders out of the Manor as the Lord, and that he ſhould *do it out of the Manor* as out of the Court. 1 Salk. 18. 4. pl. Trin. 1 W. & M. C. B. Dudfeild v. Andrews.

This in Roll is Letter (E) pl. 2. in fol. 499, 500.

[Y] [Where there are *ſeveral Surrenders of the ſame Lands* to different Uſes. Which ſhall take Place; and how.]

Lane 99. Gooch's Caſe, ſeems to be S. C. & S. P. admitted.

[1.] IF a Copyholder in Fee ſurrenders into the Hands of certain cuſtomary Tenants to the Uſe of his Wife in Fee, and after, before any Court, the ſaid Copyholder ſurrenders the ſame Lands into the Hands of other * cuſtomary Tenants, to the Uſe of his Wife for Life, the Remainder to another in Fee, and at the next Court both Surrenders are preſented, and the Steward admits the Wife according to the ſecond Surrender, this is a good Admittance, and the Wife ſhall have it but for Life, and ſo it is a good Remainder. H. 8 Ja. Scaccario, adjudged.

This in Roll is (E) pl. 3. in fol. 500. — Cro. C pl. 10. S. C. adjornatur. — Ibid. 283, 284. pl.

[2.] If a Copyholder in Fee ſurrenders out of Court into the Hands of Tenants according to Cuſtom, to the Uſe of B. in Fee, upon Condition, that if he pays 10 l. to B. the firſt of May after, it ſhall be lawful for him to re-enter, and after, and before Payment of the 10 l. ſurrenders into the Hands of Tenants, to the Uſe of C. in Fee, and after, before the ſaid firſt of May, A. pays the Money to B. and after, and

and before the ſaid Day, A. ſurrenders into the Hands of Tenants to the Uſe of D. in Fee, and the Cuſtom of the Manor is, that the Surrenders made out of Court into the Hands of Tenants ſhall be void if they are not preſented at the next Court, and at the next Court the Surrender to B. is not preſented, but the Surrender to D. is firſt preſented, and after, at the ſame Court the Surrender to C. is preſented; in this Caſe, upon the whole Matter, C. ſhall have the Land; for, notwithſtanding the Surrender to the Uſe of B. upon Condition nothing paſſed out of the Copyholder, but the Eſtate remained in him till it is preſented at the next Court, ſo that A. had Power notwithſtanding the Surrender to the Uſe of B. to ſurrender to the Uſe of C. but it was ſubject to be void if the Surrender to B. had been preſented; as if a Man acknowledges a Deed of Bargain and Sale, and after bargains and ſells to another, if the ſecond Deed be inrolled, and the firſt not, the ſecond Man ſhall have the Land; ſo it is of the Conuſance of a Fine; then in this Caſe, the firſt Surrender not being preſented, and ſo void, the ſecond Surrender is to be preferred before the third Surrender, both being preſented at the next Court, and the Performance or Non-performance of the Condition is not material in the Caſe, but it is all one as if it had been abſolute without any Condition. Mich. 8 Car. B. R. between *Burgoign and Spurling*, adjudged per Curiam upon a ſpecial Verdict. Intratur Trin. 7 Car. Rot. 374.

27. S. C. adjudged accordingly.— Jo. 306. pl. 17. S. C. held accordingly. ——— Supplement to Co. Comp. Cop. 69, 70. S. 3. cites S. C. ——— S. C. cited 2 Sid. 61. ——— Gilb. Treat. of Ten. 264. cites S. C. ſays, it ſeems this muſt be underſtood if the Money had not been paid, or a Court had been held before the Money was due, and there the the Payment of the Money, had been void, becauſe the Surrender was void then, and a void Surrender cannot be preſented, and until a Surrender be preſented, it cannot bind the Intereſt of the Land; ſed quære.— S. C. cited Arg. Pollexf. 50.

Surrender had been preſented; for it ſeems the Preſentment of the firſt Surrender, after

3. A Copyholder in Fee *ſurrendered to the Uſe of himſelf for Life*, the Remainder *to J. his Son for Life*, the Remainder *to the Uſe of his laſt Will*, and the *Admittance was ſecundum Formam Redditionis prædict'. J. dies*, afterward the *Father ſurrenders to the Uſe of the Defendant, and died, without making a Will.* It was the Opinion of the Juſtices, that by the ſecond Surrender it paſſed to the Defendant, and it is as a Feoffment at this Day to the Uſe of his Will, for it is to the Uſe of himſelf, becauſe he might diſpoſe of it by his Act in his Life-time, and ſo he might do in this Caſe. Cro. E. 441. pl. 4. Mich. 37 & 38 Eliz. B. R. Fitch v. Hockley.

4 Rep. 23. a. pl. 6. S. C. adjudged, that the Fee-ſimple of the Copyhold being limited to the Uſe of his Will, remained in the Copyholder, and

not in the Lord. ——— Gilb. Treat. of Ten. 182. cites S. C. for all the Deſign of the Surrenderor was, that he might diſpoſe of it by Will, not to veſt the Intereſt in any Body, or to give away the Power of diſpoſing of it.

4. A being ſeiſed of a Copyhold in Fee, ſurrendered *to the Uſe of his Wife* by the Hands of 2 Tenants, according to the Cuſtom, and afterwards ſurrendered the ſame Land into the Hands of 2 other Tenants *to the Uſe of his Wife for Life, Remainder to J. S. in Fee*; both Surrenders were preſented at the next Court; the Steward admitted the Wife upon the ſecond Surrender; it ſeems to be admitted, that it was good. Lane 99. Hill. 8 Jac. in the Exchequer, Gooche's Caſe.

1 Roll Abr. 499. pl. 2. reports the firſt Surrender to be made to the Wife in Fee, and ſays, 'twas a good Admittance, and the Wife ſhould have for Life, and the Remainder ſhould be to J. S and that it was adjudged. Hill. 8 Jac. in Scacc'.

(Z) *What*

This in Roll is Letter (L) in fol. 501.

[Z] *What* Act ſhall be ſaid *a Surrender in Law.*

* S. C. cited 3 Bulſt. 81. as adjudged upon a Demurrer, that this latter Acceptance was a giving up of his Inheritance. —Roll Rep. 256.

1. IF a Copyholder in Fee takes the ſame Land **from the Lord** by another Copy for Life, **this is not any Surrender or Determination of his Copyhold of Inheritance**; for a Copyhold cannot be ſurrendered but by actual Surrender **in Court, this is ſurſum reddens into the Hands of the Lord, and not by Surrender in Law. Mich. 37. El. B. between** *Shepherd and Adams*; **which intratur Hill. 36 El. Rot. 2640, adjudged. Quod vide M. 13 Ja. * B. R. ſame Caſe, and there it is admitted a Surrender**; but there ſaid, the Reverſion is in the Surrenderor, **no Diſpoſition being made thereof.**

pl. 24. cites S C. as adjudg'd that it ſhould be no Eſtoppel to claim other Eſtates, and ſo he ſhould not loſe the Inheritance; and that the Record was brought into Court and read, and the Reaſon of the Judgment was, for that it was no more than if the Copyholder had ſurrendered to the Lord to the Uſe of himſelf for Life, with the Remainders over for Lives, and ſo the Reverſion in Fee ſhould continue in himſelf. —— Gilb. Treat. of Ten. 238. cites S. C. that if Copyholder in Fee come into Court, and there accepts a Copy to himſelf for Life, Remainder to his Wife for Life, Remainder to his Son for Life, this is tantamount to a Surrender to the Uſe of himſelf &c. but he hath his old Reverſion in him, for there is no Ground to make a Surrender of that by Conſtruction, becauſe he has made no Diſpoſition of it; but as this Caſe is in Rolls, it is ſaid that it was no Surrender, for that a Copyhold cannot be ſurrendred by a Surrender in Law, but only by actual Surrender, yet as it is in other Places in Rolls, it is as in Bulſtrode, held to be a Surrender, but that the Reverſion was ſtill in the Copyholder.

† Roll Rep. 256. pl. 24. Mich 13 Jac. B R. Southcott v. Adams, S. C. a Copyholder in Fee came into Court, and accepted by Copy of the Lord an Eſtate for his Life, Remainder to his Wife for Life, Remainder to his Son for Life. Haughton thought that this was a Surrender of the Inheritance, but Doderidge e contra, and held that the Reverſion in Fee continued in him; but as to this Point the Court directed the Jury to find a Special Verdict, but they being ready to give a General Verdict, the Plaintiff was nonſuited. —— 3 Bulſt. 80. Belfield v. Adams, S. C. accordingly. —— Supplement to Co. Comp. Cop. 68. S. 2. cites S. C. —— If the Acceptance had been only of an Eſtate for Life to himſelf who had the Fee, there might be ſome Queſtion, whether this ſhould not conclude him of the Inheritance; Per Doderidge J. Roll Rep. 256.

Gilb. Treat. of Ten. 237. S. P. —— *Saying to the Lord,*

2. [So] **If a Copyholder in Fee** comes into Court, and ſays, **That** he renounces his Copy, **this is not any Surrender. M. 37 El. B. in the ſaid Caſe held.**

that *he will hold* the Land *no longer by Copy but by Bill*, on which the Lord makes him a Bill, which Tenant *accepts*, per tot. Cur. it is a Determination of Copyhold. And. 199. pl. 235. Coleman v. Bedill —— Le. 199. pl. 273. Mich. 31 & 32 Eliz. C. B Coleman v. Portman, S. C. held clearly a good Surrender. —— Gilb. Treat. of Ten. 283. cites S. C.

2 Le. 49. pl. 65. S. C. in totidem Verbis. —— Supplement to Co. Comp. Cop. 77. S. 2. cites S. C. and Lord Coke ſays, he conceives generally, that *no Act or Words of the Copyholder can paſs his Copyhold* in ſuch a Manner, *as that the ſame ſhall be accounted to amount to a good Surrender of the ſame*; but that yet it reſts upon a Difference.

3. *M. ſeiſed of the Manor* of D. *became bound in a Statute to A. who died.* The *Executors of A. ſued Execution againſt M.* Upon the Extendi facias a *Liberate iſſued, and* thereupon *the Manor was delivered to the Executors, but* was *not returned.* M. commanded a *Court Baron* to be held, and *was held* accordingly *by Sufferance of the Executors, who were preſent at the Time, and in M's Preſence they ſaid*, viz. *we have nothing to do with this Manor*; per Wray Ch. J. this is no Surrender; for the Words are not addreſs'd to M. the Conuſor who is capable of a Surrender, nor to any Perſon certain; and this is but a general Speech. Le. 279. pl. 378. Hill. 28 Eliz. B. R. Penruddock v. Newman.

4. *Lord*

4. *Lord pretending a Forfeiture by a Copyholder in Fee*, the *Copyholder agrees to pay him* 5 l. and paid it, *in Conſideration whereof he was to enjoy the Copyhold, except a Wood*, for his Life, *and his Wife's Widowhood*, and that the Tenant *ſhould have Election whether the Lands ſhould be aſſur'd* to him *by Copy or by Bill* &c. The Tenant choſe to have the Land *aſſured to him by Bill*; The Lord enjoyed the Wood, and this was held a good Surrender for Life only, and that the Lord had the Wood diſcharged of the cuſtomary Intereſt. Le. 191. pl. 273. Mich. 31 & 32 Eliz. C. B. Coleman v. Sir H. Portman.

Supplement to Co. Comp. Cop. 68. S. 2. cites S. C. that this was a good Surrender, and a good Eſtate thereupon veſted in the Wife for her Life.

— Gilb. Treat. of Ten. 237, 238. cites S. C. and ſays, that the *Communication* in this Caſe ſeems to have been that which cauſed the Surrender, for nothing elſe could; and for aught appears this Communication was out of Court; The Acceptance by Bill could not be the Surrender in this Caſe, for the Bill was never made of that, ſo that it could only be the Communication that amounted to a Surrender.

5. *Parol Agreement* adjudged a Surrender; Arg. 2 Show. 131. cites Le. 181.

6. A *Bargain and Sale* to the Lord is a Surrender; Arg. 2 Show. 131. cites Jo. 141.

7. If a Copyholder or other cuſtomary Tenant ſhall *ſay* to his Lord, or other Perſon, *in the Court of the Manor*, *I agree to ſurrender my Lands*, theſe Words will not be a Preſent, or an expreſs Surrender, nor will they amount to ſo much as a relinquiſhing of his Eſtate; for in Truth it is not any Thing in preſent but an Act to be done in Futuro like unto the Caſe put by Wray Ch. J. A. ſeiſed of the Manor of D. demiſeth the ſame Manor at Will, that it is no Leaſe, no more in the other Caſe ſhall it be a Surrender, or a relinquiſhing his Copyhold, or Copyhold Eſtate, but yet, notwithſtanding, it will be agreed, that in ſome Caſes an expreſs and particular Agreement made by a Copyholder with the Lord of the Manor, for, or concerning his Copyhold Lands, will amount to a Surrender of the ſame. Supplement to Co. Comp. Cop. 68. S. 2.

Le. 177, 178. pl. 350. Trin. 31 Eliz. B. R. Sweeper v. Randal, S. P. and ſeems to be S. C. — Gilb. Treat. of Ten. 258. ſays, there can be no Reaſon why a Surrender in Court by Words ſhould be of more Validity than a Surrender by Words out of Court.

8. If a *Copyholder bargains and ſells his Land to J. S.* and this is found by the Homage, and J. S. prays to be admitted Tenant, yet the Heir of the Copyholder ſhall avoid the Admiſſion, becauſe of the Inſufficiency of the Surrender taking by the Words of Bargain and Sale, and not by the Words of the Surrender; per Lord Dyer. D. 8 Eliz. Calth. Reading. 57.

9. If a *Copyholder comes into the Court, and deſires his Lord to admit his Son* to be Tenant in his Father's Place, this ſeems a good Surrender to the Uſe of his Son. Calth. Reading. 57, 58.

10. If a Copyholder will *in the Preſence of other Copyholders* of the ſame Manor *ſay, that he is content to ſurrender his Copyhold Lands to the Uſe of J. S.* this is no good Surrender; *But if he ſays he doth ſurrender into the Hands of the Lord to the Uſe of J. S. if the Lord will thereunto agree*, this is a good Surrender, whether the Lord will or not. Calth. Reading. 58.

11. If the Tenant *reſigns his Intereſt in the Court, into the Lord's Hands, there withal for the Lord to do his Will*, this is a good Surrender if it be accepted. Calth. Reading. 58.

12. If a Copyholder *ſays he will be no longer the Lord's Tenant*, though theſe Words be recorded, yet this is no good Surrender. Calth. Reading. 58.

13. If a *Copyholder for Life takes a new Eſtate for Life by Copy*, this is a Surrender of his firſt Eſtate. Calth. Reading. 59.

14. *But if a Copyholder for Life takes a Leaſe of the ſame by Indenture for Life*, this is not a good Surrender of the Copyhold; Quære. Calth. Reading. 59.

15. If a Copyholder *comes to the Lord and tells him, that for the Preferment of his Son in Marriage* with ſuch a Man's Daughter, *his Will is, to give his Land preſently to his Son, and deſires the Lord that he would be contented therewith*, this is no good Surrender. Calth. Reading. 59.

16. *But if he ſaid theſe Words in the Lord's Court, and the ſame is recorded, or found by Homage as a Surrender, and ſo preſented*, then this had been a good Surrender, without any other Words of Surrender. Calth. Reading. 59.

Gilb. Treat. of Ten. 294. S. P. —— Gilb. Treat. of Ten. 237. S. P. —— If he *ſays, that he is content to ſurrender*, this is no Surrender, for it only expreſſes his Inclination to do it, but not that he actually does it; and adds a Quære, if Words ſpoke out of Court will amount to a Surrender; But *any Words ſpoke in Court by a Copyholder, ſhewing his Intention to ſurrender into the Lord's Hands*, amounts to a good Surrender. Ibid.

17. If he *come into Court, and ſays, he is weary of his Copyhold, and requeſts the Lord to take it*, this is a Surrender; for between the Lord and Tenant a Conveyance need not be according to the Cuſtom of the Manor; for a Copyholder has no other Uſe of the Cuſtom, than to convey his Lands to a Stranger; per Hobart Ch. J. Hutt. 65. Trin. 19 Jac. in Caſe of Blemmerhaſſet v. Humberſtone.

(A. a) Of what a Surrender may be.

Gilb. Treat. of Ten. 281. cites S. C. — *Rent was reſerved on a Surrender in Fee*, and the Surrenderee admitted ſeveral Alienations made of the Land, and afterwards the Rent was aſſigned over, and was ſo done by Surrender and Admittanee. It was inſiſted, that tho' in Strictneſs the Rent would not paſs in Law by Surrender, yet the Surrender and Admittance were *Evidences of the Agreement for the Sale*, and the Plaintiff was a Purchaſor, and ſo intitled, and decreed accordingly; per Jefferies C. 2 Vern. 16. pl. 10. Hill. 1686. Spindler v. Wilford.

1. COpyholder leaſed his Land for Years by Licence, and afterwards by Deed granted the *Rent* to a Stranger, to have during the Term &c. The Leſſee attorned and paid Rent to the Grantee; per Gaudy J. the Grant is good, but now 'tis but a Rent-Seck, and it was ſaid by ſome, that the Leſſor *cannot ſurrender Rent reſerved on a Leaſe for Years unleſs he ſurrenders the Reverſion alſo.* Le. 315. pl. 441. Paſch. 30 Eliz. B. R. Auſtin v. Smith.

2. Tho' it be incident to the Eſtate of a Copyhold to paſs by Surrenders, yet ſo forcible is *Cuſtom*, that by it a *Freehold and Inheritance* may paſs by Surrenders (without the Leave of the Lord) in his Court, and delivered over by the Bailiff to the Feoffee, according to the Form of the Deed, to be *inrolled* in the Court &c. Co. Litt. 60. b.

3. Copyholder *aliens Part*, it ſeems the Lord is compellable in Chancery to accept ſuch Surrender. Palm. 342. Hill. 20 Jac. B. R. in Caſe of Snag v. Fox.

(B. a) Surrender. To whoſe Uſe it may be.

1. A Man may Surrender to the uſe *of his Wife.* 4 Rep. 29. b. pl. 18. Mich. 27 & 28 Eliz. in Caſe of Bunting v. Lepingwell.

2. A Surrender *to the Steward to his own Uſe* is good, for the Entry is Quod ſurſum-reddidit in Manus Domini, and the Steward is but the Lord's Servant, and the Surrender is to the Lord, and not to him. Cro. E. 17. pl. 43. Mich. 41 & 42 Eliz. C. B. Eriſh v. Reeves. And tho' it was endeavoured to be proved, that by the *Cuſtom of the Manor* a Surrender could not be made to the Steward himſelf to his own Uſe, the Court rejected it, becauſe it was againſt Law. Cro. E. 717. in S C. ——Supplement to Co. Comp. Cop. 67. S. 1. cites S. C.——Gilb. Treat. of Ten. 261. cites S. C.

3. If a Surrender be made in Court into the Hands of the Lord or his Steward, it muſt be *to ſuch a Perſon or his Uſe who is in Eſſe, and capable* of ſuch a Surrender, or that may take preſently by Force of the Surrender, otherwiſe ſuch Surrender, tho' it be an actual Surrender made in the Court of the Manor to the Lord or Steward himſelf, is not good. Supplement to Co. Comp. Cop. 67. S. 1.

4. If a Copyholder *in Conſideration of 20 l. to be paid to J. S.* does *make a Surrender of his Land to N. R.* this Surrender is to the Uſe of J. S. becauſe of the Conſideration expreſſed in the Copy, and not to the Uſe of N. R. *But if in the Copy the Uſe be expreſſed to N. R. and no Conſideration mentioned*, the Uſe expreſſed ſhall ſtand againſt any Conſideration to be averred. Calth. Reading. 37.

[C. a] *By what Perſons, and to whom* it may be *Surrendered.*

This in Roll is Letter (O) Fol. 503.

1. TEnant for Life **of a Copyhold**, where there is a Remainder over, may **ſurrender to the Lord.** Co. 9. **Marg. Podger.** 107.

2. If the *Lord of a Manor* for the Time being be Leſſee for Life or for Years, Guardian, or any that *has any particular Eſtate*, or *Tenant at Will* of a Manor, (all which are accounted in Law Domini pro Tempore) do take a Surrender into his Hands; and *before Admittance* the Leſſee for Life *dies, or the* * *Years Intereſt*, or *Cuſtody* do end or determine, or the *Will* is *determined*, tho' the Lord comes in above the Leaſe for Life or for Years, the Cuſtody or other particular Intereſt or Tenancy at Will, yet he ſhall be compelled to make Admittance according to the Surrender. Co. Litt. 59. b. cites it as held 17 Eliz. in the Earl of Arundel's Caſe.

Gilb. Treat. of Ten. 267. cites 8. C. — * When he is become Tenant at ſufferance he may take a Surrender cited by Doderidge J. as adjudg'd in B. R. 2. Roll Rep. 181.

3. A *Tenant for Life* of a Copyhold, Remainder over *in Fee to B. B. may ſurrender* his Eſtate, *if there is no Cuſtom to the contrary*; for the Eſtate of Tenant for Life, and of him in Remainder, are but one Eſtate, and the Admittance of Tenant for Life is the Admittance of him in Remainder; held by the Barons. 4 Leon. 9. pl. 38. Mich. 33 Eliz. in Scacc'. Butler v. Lightfoot.

2 Le. 239. pl. 329. S. C. in totidem Verbis.

Supplement to Co. Comp. Cop. 69 S. 3. cites 8. C But ſays Quære — See Tit. Steward of Courts (F) pl. 1. and the Notes there.

4. J. S. was *generally retain'd* by the Lord of a Manor *by Parol to be Steward* of his Manor, and to keep his Courts, adjudg'd that ſuch Steward may take Surrenders of the Cuſtomary Tenants out of Court; for till he be diſcharged he is Steward of the Manor as well by Retainer, by Parol, as if he had a Grant thereof by Deed. 4. Rep. 30. b. pl. 21. cited as Holcroft's Caſe.

5. Any *one who may be a good Grantor in a Deed at Common Law*, may make a good Surrender of Copyhold Land, *As* any *Body Politick or Corporate, Felons before Attainder, Baſtards, Hereticks, Lepers, Deaf, Dumb, or blind* Men, being Tenants, may ſurrender a Copy; and Surrenders made by ſuch who are diſabled to make a Grant at Common Law are void, As Surrenders by *Infants, Aliens, Ideots*, ſuch as are *born deaf, dumb, and blind, Women covert without their Husbands* See Co. Comp. Cop. S. 34, 35.

Lev. 26. Milfax v. Baker S. C. but S. P. does not appear. —— Gilb. Treat. of Ten. 271. cites S. P. that it is good.

6. Where the *Cuſtom* of a Manor is *to Surrender to two Copyholders out of Court*, a *Surrender to the Heirs of a Copyholder before Admittance is good*; per Twiſden J. the other Juſtices being abſent. Keb. 25. pl. 74. Paſch. 13 Car. 2. B. R. in Evidence to a Jury. Munitas v. Baker.

[D. a] Surrender. By or to Feme Covert, Infant &c.

Cro. E. 90. pl. 17. Knight v. Fortipan, S. C. adjudged. —— It is no Diſcontinuance.

1. A. *Tenant for Life, Remainder in Fee to B. an Infant*; they both *joined in* a Surrender to J. S. in Fee. B. dies. The Heir of B. may enter, and is not put to his Plaint in Nature of a Dum fuit infra Ætatem. Le. 95. pl. 124. Hill. 30 Eliz. B. R. Knight v. Footman.

Gilb. Treat. of Ten. 179. —— An Infant ſurrenders Copyhold Lands, he may at full Age diſagree and enter; for in Caſe where an Infant makes a Feoffment in Fee, he may enter, much more in Caſe of a Surrender; for a Feoffment is a Conveyance which will work a Diſcontinuance, but a Surrender will not. Gilb. Treat. of Ten. 261.

A *Tenant out of Court cannot take a Surrender of a Feme Covert*, for that ſhe is ſecretly to be examined by the Steward; by the Opinion of the Judges. Toth. 108. cites 38 Eliz. li. A. fol. 420. Rich v. Erth.

2. A Surrender by a Feme Covert *made upon Examination before two Tenants of the Manor by Eſpecial Cuſtom* is good. Cro. E. 717. pl. 43. Mich. 41 & 42 Eliz. C. B. Eriſh v. Reeves.

3. *But without Eſpecial Cuſtom* to warrant it, it is not good, becauſe it is a *Judicial Act*, proper to be done in Court; and Walmſley ſaid it was ſo adjudged upon Demurrer in a Lancaſhire Caſe, where ſuch a Cuſtom was pleaded and adjudged good. Cro. E. 717. pl. 43. Mich. 41 & 42 Eliz. C. B. Eriſh v. Reeves.

—— Gilb. Treat. of Ten. 295. cites S. C. and ſays, that an Examination of a Feme Covert by the Steward out of Court, though it did not appear that he was Steward by Patent, or that there was any ſuch Cuſtom for ſuch an Examination, was held good.

4. A *Feme Covert may receive a Copyhold Eſtate by Surrender from her Husband*, becauſe ſhe comes not in immediately by him, but by mediate Means, viz. by the Admittance of the Lord according to the Surrender. Co. Comp. Cop. 49. S. 35.

5. A

5. A *Feme Covert* being *ſecretly examined* by the Steward, comes into Court with her Husband, and *releaſes by Surrender* in Court to a Tenant in Poſſeſſion; The Husband dies; This is good to bind the Wife, and the Tenant needs no new Grant or Admittance of the Lord, and affirmed the Judgment. 2 Show. 82. pl. 70. Mich. 31 Car. 2. B. R. Stone v. Exton. Gilb. Treat. of Ten. 261. ſame Points.

6. The Surrender of a Copyhold Eſtate *by an Infant of 4 or 5 Years of Age* allow'd of by this Court, yet the Lord of the Manor inſiſted, he never heard of any Admittance in that Manor at ſuch an Age. 2 Chan. Rep. 392. 2 Jac. 2. Naylor v. Strode.

(E. a) Surrender. How. Conditional and charging the Eſtate.

1. THE *Father ſeiſed of a Copyhold in Fee ſurrenders it to the Uſe of his Son in Fee upon Condition to perform Covenants in an Indenture*; the *Son after Admittance ſurrenders to J. S. upon Condition, that if the Son pay* 10 l. *the Surrender to be void*; the Son *neither pays the* 10 l. *nor performs the Covenants*; the *Father enters, and dies ſeiſed*; the *Lands deſcend to the Son*; It was the Opinion of the Court, that by the Entry of the Father, both the Surrenders were avoided, and that the Son might well enter after the Death of his Father, and avoid the Surrender made to J. S. Cro. E. 239. pl. 6. Trin. 33 Eliz. B. R. Simonds v. Lawnds. S. C. cited Supplement to Co. Comp. Cop. 81. S. 15. —Gilb. Treat. of Ten. 260, 261. cites S. C.

2. Surrender was *to the Uſe of one in Fee upon Condition to pay* 100 l. *to a Stranger, and if he failed, that it ſhould be to the Uſe of a Stranger in Fee*, whether in this Caſe (upon the Tender of 100 l. to a Stranger, and he refuſing) the Condition be ſaved, for as much as it is to be done to a Stranger. The Court moved, that it ſhould alſo be ſpecially found. Cro. E. 361. pl. 22. Mich. 36 & 37 Eliz. C. B. Paulter v. Cornhill. Gilb. Treat. of Ten. 260. cites S. C. and ſays, this Caſe now ſeems to be beyond all Doubt, that the Condition is ſaved; for it was the Deſign of the Parties that the Surrenderee ſhould retain the Land; therefore if a Feoffment be made in Fee on Condition, that the Feoffee ſhall grant a Rent-charge to a Stranger, if the Feoffee tender the Grant, and he refuſes, the Condition is ſaved.

3. Lord of a Manor *demiſed* a Copyhold of Inheritance to A. *on Condition to pay* 20 s. *per Annum during B's. Minority, and* 100 l. *at his full Age*. A. fails in Payment, and *ſurrendered to C.* and his Heirs. The Lord *admits C.* and afterwards B. comes to Age, but the 100 l. is not paid to B. The Lord enters for the *Condition broken*, and *grants to B.* by Copy, and whether his Entry was lawful, or that the Acceptance had *diſpenſed* with the Condition, was the Queſtion; Fenner J. held, that he might well enter, for he to whoſe Uſe the Surrender is made comes in by him that ſurrendered, and not by the Lord, for the Lord is but an Inſtrument to convey the Land, ſo the Condition is not gone; but Gaudy doubted thereof, &c. cæteris Juſt' abſent' adjornatur. Cro. E. 582. pl. 7. Mich. 39 & 40 Eliz. B. R. Pay v. Gibbon and Brown. Supplement to Co. Comp. Cop. 71. S. 6. cites S. C. and ſays, it was held, that the Entry was lawful.——4 Rep. 21. b. cites 1 H. 5. Fol. 11, 12. S. P. — Gilb. Treat. of Ten. 316, 317. cites S. C. and ſays, that ſurely the Lords affirming the Power of the Copyholder to ſurrender an Eſtate after the Breach of the Condition for not paying the 20 s. is a good Diſpenſation, for that Forfeiture, as well as if he had accepted Rent after the Forfeiture, for the affirming his Power to grant over his Eſtate, is as much an Indication of the Lord's Mind for the Continuance of the Eſtate, as the Acceptance; but then as for the Forfeiture that accrued after the Admittance, it ſeems the Admittance could not paſs away that, for the Land was charged with the Condition, into whoſe Hands ſoever it came, and this

ſeems to be Fenner's Opinion, by the Reaſon he gives, for that the Ceſty que Uſe coming in by the Surrenderor, the Lord by his Admittance did not paſs away his Intereſt in the Condition, the Queſtion was, whether the Lord had diſpenſed with the Condition, not whether he had diſpenſed with the Forfeiture of the Condition broken, for that was not broken in Part, till after the Admittance; yet, a Breach in Part was a Breach of the whole Condition. —— A Copyholder in Fee may ſurrender, reſerving Rent, with a Condition of Re-entry for Non payment, and he may Re-enter for Non-payment; for having a Fee-ſimple according to the Cuſtom of the Manor, he may reſerve what Profits he pleaſes out of it by the ſame Reaſon as he may diſpoſe of it as he pleaſes. Gilb. Treat. of Ten. 146, 147.

4. Where a Surrender is made by A. to B. on *Condition that B. ſhall pay* 100 l. *to a Stranger*, theſe Words make an Eſtate conditional, and give Power implied to the *Heirs of A.* to *re-enter* for Non-payment, and if there are Words which give Power to a *Stranger to re-enter*, they are merely void, nevertheleſs the precedent Words ſhall ſtand and make the Eſtate conditional; per Doderidge Serjeant; And per Tanfield Ch. B. Littleton ſays, that ſuch a Re-entry is void, for a Re-entry cannot be limited by a Stranger; Serjeant Nichols ſaid, that if a Surrender be made that he ſhall pay 100 l. this makes the Eſtate conditional, and gives a Re-entry to the Heirs of A. but when it goes further, and limits the Re-entry to a Stranger, ſo that it does not leave the Condition to be carried by the Law, in ſuch Caſe all the Words ſhall be void, becauſe it cannot be according to the Intent; as in Caſe of Reſervation of Rent, the Law will carry it to the Reverſion, but if it be particularly reſerved, then it will go according to the Reſervation, or otherwiſe will be void. Lane 99. Hill. 8 Jac. in the Exchequer, in Gooch's Caſe.

5. A. made a Mortgage Surrender to B. but the Money not being paid at the Day, *B. entered without any Admittance, and deviſed* the Copyhold to his Son C. and died ſeiſed. C. entered, and the *Lord by Agreement took the Profits* for a Time certain *in lieu of a Fine*, but after pretending the Land was forfeited, becauſe B. was not admitted, and had paid no Fine, refuſed to deliver up the Poſſeſſion, though the Profits received amounted to more than the Fine. A. being dead, his *Heir releaſed* to the Son of the Lord, but without any Conſideration expreſſed, and he conveyed the Premiſſes to his Father; it was held, that though ſuch Releaſe had extinguiſhed his Entry, yet the ſame ſhould *enure* to the Benefit of him that had the former Right *in Truſt only, and for the Uſe of C.* the Plaintiff, and decreed the Poſſeſſion to him accordingly againſt the Defendants, and all claiming under them. N. Ch. R. 7, 8, 9. 5 Car. 1. Lucas v. Pennington, Wright, and Noble.

6. The *Father both of the Plaintiff and the Defendant, being ſeiſed* of a Copyhold Eſtate, *ſurrendered* the ſame *to the Uſe of his Will, and deviſed it to the Defendant*, who was *his eldeſt Son, paying his Debts, and ſo much Money to the Plaintiff, his Siſter, for her Portion, when of Age; but if he failed to pay the Portion, then ſhe was to have as much of the Copyhold Eſtate as did amount to the Value of her Portion.* She afterwards came of Age, and the Defendant refuſed to pay the Portion, whereupon the Homage allotted to her as much of the ſaid Copyhold Lands as they adjudged to be the Value of her Portion; but the Defendant being admitted, refuſed to ſurrender the ſame; thereupon the Plaintiff exhibited her Bill, to have her Portion or the ſaid Allotment decreed to her, and the Court gave Day for the Payment of the Portion, and *if he failed, then he was decreed to ſurrender the Allotment to the Uſes declared in the Will.* Nelſ. Chan. Rep. 24, 25. 8 Car. Marſton v. Marſton.

2 Chan. Caſes 94. Row v. Tillier. Paſch.

7. A. the Father of M. ſurrendered to W. his Nephew *on Condition to pay* 200 l. *to M. at* 21, *and if ſhe died before* 21. *without Heirs of her Body*, then to W. M. dies before 21. leaving a Son; the 200 l. was decreed

to

to the Son, and that the Lands ſtand charged with it. 2. Chan. Rep. 214. 33 Car. 2. Roſe v. Tiller. 34 Car. 2. S. C. the Mother

died, and the Son died an Infant; the Husband of M. and Father of the Child took Adminiſtration to them both, and ſued the Son and Heir of W. and the 200 l. was decreed to the Plaintiff. —— It is added, that A. gave his perſonal Eſtate of good Value to W. but nothing elſe of his own to M. his ſaid only Child.

8. A Copyholder ſurrenders *to the Uſe of J. S. paying his Executor* 100 l. within ſuch a Time after his Death; He to whoſe Uſe this Surrender is made takes by Force thereof preſently; per Doderidge J. 2 Bulſt. 274, 275. Mich. 12 Jac. Gilb. Treat. of Ten. 260. cites S. C. that this is a preſent Surrender; for otherwiſe it can be of no Effect.

[F. a] *How*; And in what Manner a *Surrender may be made.*
By *Attorney.*

This in Roll is Letter (G) in Fol. 500.

1. A Copyholder in Fee may ſurrender in Court by Letter of Attorney without any Cuſtom, becauſe he himſelf might there have ſurrendered De Communi Jure, by the Common Law, without ſuch Cuſtom. Co. 9. Combe 75. b. reſolved. Co. Comp. Cop. 49. S. 34. S. P. and ſays, that ſhould the Law be

otherwiſe great Inconvenience would enſue; for how ſhould Copyholders that are in Priſon, or languiſhing in Bed, or beyond the Seas, Surrender but by Attorney?—A Copyholder in Fee made a *Letter of Attorney to two Tenants of the Manor, to ſurrender his Copyhold out of Court to the Uſe of J. S. and his Heirs*; they ſurrendered the ſame accordingly, and at the next Court brought in the Surrender into Court, (but *no Cuſtom was found to warrant ſuch a Surrender.*) Notwithſtanding in that Caſe it was reſolved, 1ſt. That it was a good Surrender, becauſe he might do it De communi Jure without alleging any Cuſtom. 2dly, When the Tenants ſhewed the ſame in Court, and the Authority which was given to make the Surrender, all which they had done, was reſolved to be good, and legally done. Supplement to Co. Comp. Cop. 70. cites 9 Rep. Comb's Caſe. —— Gilb. Treat. of Ten. 202. S. P. and ſays, the Law allows his doing it by Attorney as an Incident to the Power which he has to ſurrender in Court.—Ibid. 236. S. P. and cites S. C.

2. Hill. 28 Eliz. Chapman's Caſe, cited [in] Co. 9. Combe 76. it was held, That where * by the Cuſtom a Copyholder out of Court might ſurrender into the Hands of the Lord, by the Hands of two cuſtomary Tenants, that in Effect are but Attornies, that he cannot ſurrender by Attorney to the Lord by two Tenants, for there the Cuſtom, that is the Warrant thereof, ought to be purſued. Co. Comp. * Fol. 501. Cop. 49. S. 34. S. P. —Gilb. Treat of

Ten. 203. S. P. —— Ibid. 236. S. P. that he cannot do it by Attorney without a ſpecial Cuſtom.

3. Gilb. Treat. of Ten. 236. ſays, that it is ſaid to be reſolv'd that a Copyholder *cannot ſurrender by Attorney without Deed*, and cites Pract. Reg. 136. *but* that he *may be admitted by Attorney without Deed.* But the Ch. Baron ſays, Quære of this.

4. By Clench; *Leſſee for Years* cannot ſurrender by Attorney, but he may make a Deed purporting a Surrender, and a Letrer of Attorney to another to deliver it. Le. 36. pl. 45. Trin. 28 Eliz. B. R. Anon.

5. A Copyholder of the Manor of Arundel did *ſurrender* his cuſtomary *Lands to the Uſe of his laſt Will, and thereby deviſed the Lands to his youngeſt Son* and his Heirs, *and died*; the *youngeſt Son being in Priſon makes a Letter of Attorney to one to be admitted* to the Land in the Lord's Court *in his room*, and alſo *after Admittance to ſurrender the ſame to the Uſe of B. and his Heirs, to whom he had ſold it for the Payment of his Debts*; and Wray was of Opinion, that it was a good Surrender by Attorney;

Attorney; but Gawdy and Clench contrary; and by Gawdy, if he who ought to ſurrender cannot come into Court to ſurrender in Perſon, the Lord of the Manor may appoint a ſpecial Steward to go to the Priſon and take the Surrender &c. Le. 36. pl. 45. Trin. 28 Eliz. B. R. Anon.

6. If there be a ſpecial *Cuſtom that a Copyholder for Life may make Eſtate for 20 Years to continue after his Death*, theſe Eſtates cannot be made by Attorney. Co. Comp. Cop. 49. S. 34.

7. *So* if there be a ſpecial Cuſtom, *that an Infant at the Age of Diſcretion may ſurrender* a Copyhold; this Surrender being confirmed by ſpecial Cuſtom only, cannot be made by Attorney. Co. Comp. Cop. 49. S. 34.

8. There was a *Cuſtom* within the Manor of Caſtle-Dunnington, *that any Copyholder* of that Manor *may make a Writing in the Nature of a Letter of Attorney to two Copyholders* of the ſame Manor, *to ſurrender his Copyhold after his Death.* The Queſtion was, whether this was good Cuſtom or not? The Court delivered their Opinion, that the Cuſtom was good; and Roll Ch. J. ſaid, that the Death of the Party doth not revoke this Writing made in the Nature of a Letter of Attorney, for it is ſtrengthened by the Cuſtom, and *it it not like an Ordinary Letter of Attorney*, which becomes void by the Death of him that made it; for this Cuſtom is a Law, and the Authority here ſurvives, As an Executor may ſell the Teſtator's Lands, if he be impower'd to do it by the Will, and therefore the *Cuſtom is good*, and let the Plaintiff have Judgment Niſi, &c. Sty. 423. Trin. 1654. Roby v. Twelves.

This in Roll is Letter (H) in Fol. 501.

[F. a. 2] [*Surrender* by Attorney.] How the Attorney ſhall do it.

1. **If the Letter of Attorney be made to Men to make a Surrender in Court, the** Attornies ought to purſue the Form and Manner of the Surrender in all Points, according to the Cuſtom, **as the Copyholder himſelf ought to have done, as if it ought to be by the Rod, or other Thing. Co. 9. Combe 76. b. reſolved.**

S. C. cited Arg. Godb. 389.

2 **The Attorney ought to make it** in the Name of him that gave him the Authority. **Co. 9. Combe 76. b. reſolved.**

3. **A Letter of Attorney was made to two to make a Surrender, and they** ſhewed their Letter of Attorney, and then they Authoritate eis per prædictam Literam Attornati data, ſurrendered it, **this is as much as to ſay, that we, as Attornies of the Copyholder ſurrender, and both are well done** in the Name of him that gives the Authority. **Co. 9. Combe 77. Curia.**

(G. a) Surrender. Without expreſſing to whoſe Uſe it ſhall be. How the Admittance may be.

1. IF I *Surrender generally* into the Hands of the Lord, *not expreſſing to whoſe Uſe* the Surrender ſhall be, this Surrender is a good Surrender, and *ſhall enure to the Benefit of the Lord.* Co. Comp. Cop. 49. S. 35.

2. J. W

2. J. W. a Copyholder in Fee, 10 Eliz. *ſurrendred* his Land *into the Hands of the Lord by the Hands of Tenants* according to the Cuſtom &c. *without ſaying to whoſe Uſe* the Surrender ſhould be; and *at the next Court* the ſaid *J. W. was admitted Habend' to him and his Wife in Tail, the Remainder to the right Heirs of J. W.* Reſolved by the whole Court for the firſt Point, that *the ſubſequent Act ſhall explain the Surrender*; for, *Quando abeſt Proviſio Partis, adeſt Proviſio Legis*, and when the Copyholder accepts a new Admittance the Law intends that the Surrender generally made was to ſuch an Uſe as is ſpecified in the Admittance, and the Lord is only as an Inſtrument to convey the Eſtate, and as it were put in Truſt to make ſuch an Admittance, as he who Surrenders wou'd have him to make. Poph. 125. Trin. 15 Jac. B. R. Brook's Caſe.

Supplement to Co. Comp. Cop. 71, S. 6. cites C. —— Cro. J 434. pl. 1. S. C. and ſays, that in many Manors there are no other Forms of Grant or Limitation. —— Gilb. Treat. of Ten. 239. cites S. C.

and ſays, that the ſubſequent Admittance explains to what Uſe the Surrender was made.—Lord Raym. 626. 627. Hill. 12. W. 3. S. C. cited by Holt Ch. J. and ſaid, that if a Copyholder ſurrenders to the Lord without limiting any Uſe, the Copyhold belongs to the Lord, and *his Eſtate is extinguiſhed*, in the ſame Manner as if Tenant for Life at Common Law releaſes to him in Reverſion; and then the Grant will be a voluntary Grant of the Lord.

3. If a *Surrender be to the Lord, quod inde faciat voluntatem*, yet *by Cuſtom the Surrenderor by Petition or Declaration may direct it to any Perſon whatever, and the Lord muſt purſue it*, and there is no Eſtate in the Lord, but it remains in the Tenants Hands till Admittance of ſuch Party, and the Purchaſor may come in at any Time; per Cur. 2 Keb. 823, 824. pl. 41. Mich 23 Car. B. R. in Peebles Caſe.

4. If a *Surrender* be made *to the Lord expreſſing no Uſe*, it ſhall be to the Uſe of the Lord; for it cannot be imagined that the Surrender was made to no End or Purpoſe; and a Surrender may be made to the Lord, and no Uſe need be expreſſed. Gilb. Treat. of Ten. 239.

(H. a) Surrender. Abſolute Surrender. To what Lord. Diſſeiſor.

1. AN abſolute Surrender by a Remainderman for Life to a *Diſſeiſor Lord's own Uſe* was held not good, and the Copyhold not extinguiſhed thereby, for he had no Eſtate capable of a Surrender; for the Poſſeſſion of the Copyholder for Life prevented a Diſſeiſin, and ſo the Reverſion continued in the rightful Lord; but had the Surrender been *to the Uſe of another* it had been good, the Lord in that Caſe being only an Inſtrument, and the Eſtate not out of the Surrenderee till the Admittance of the Surrenderor. And ſo a Judgment in C. B. was affirm'd per tot. Cur. 2 Jo. 253. Paſch. 33 Car. 2. B. R. Pitt v. Moore.

S. C. in B. R. in Error on Judgment in C. B. but Adjornatur. 2 Show. 153. Pitt v. Moor. —— Skinn. 28. pl. 4. S. C. argued. —— 2 Mod. 287. Moore v.

Pit. S. C. North Ch. J. and Windham inclin'd, that the Surrender was not good; but Atkins J. e contra.———Vent. 359. S. C. argued, & Adjornatur.———Freem. Rep. 245. pl. 257. S. C. argued.

(I. a) Surrender to the Uſe of a Will.

Dal. 76. pl. 3. S. C. for he had reſpect to that in making his Surrender, and by his ſaying he ſurrendered all his Land accordingly, he ſhewed that his Intent was only to paſs thoſe Lands that were deviſed by the Will. ——Here was no Queſtion about the validity of the Surrender which was *only by Parol, and into the Hands of the 3 Tenants of the Court*, but it is not ſaid, *in Court*, and indeed the Caſe cannot well be ſuppoſed to be in Court for then the Surrender had been to the Lord or Steward, and there can be no Reaſon why a Surrender in Court by Words ſhould be of more Validity then a Surrender by Words out of Court. G. Treat. of Ten. 257.

1. A. Seiſed of Copyhold Lands deviſed a certain Parcel of them to his Wife for Life, Remainder to his Brother and his Heirs, and *afterwards in Preſence of 3 Perſons of the Court ſaid to them, I have made my Will as I would have it, and here I ſurrender all my Copyholds Lands into your Hands accordingly*; by this not all his Copyhold Lands are ſurrendered, but thoſe only mentioned in his Will. 3 Le. 18. pl. 43. 14 Eliz. B. R. Anon.

2. A. deviſed that B. ſhould have a Copyhold in Fee, (or deviſed a Copyhold to B. for ever) and afterwards a Surrender is made unto the Lord *to grant* the Copyhold *according to the Will*; the Lord may grant to B. in Fee. Godb. 137. pl. 162. 29 Eliz. B. R. Allen v. Patſhall.

Supplement to Co Comp. Cop. 81. S. 15. S C. —— Gilb. Treat of Ten. 258, 259. S. C.

3. A. Copyholder in Fee deviſed to his Wife for Life, and that ſhe ſhould ſell the Reverſion for Payment of his Debts, and afterwards he ſurrendered to the Uſe of his Wife for Life *according to the Will* and Deed [and died.] It was adjudged, that ſhe might ſell this becauſe in his *Surrender* he *referr'd to his Will*, and afterwards ſhe ſurrendered upon Condition to pay 12 l. this was held to be a good Sale according to the Will. Cro. E. 68. B. R. Hill. 29 & 30 Eliz. Bright v. Hubbard.

4. A Copyholder ſurrenders to the Uſe of his laſt Will, and he afterwards makes a Will, *the Lands do not paſs by the Will, but by the Surrender*; for *the Will is only declaratory of the Uſes* of the Surrender. Bulſt. 200. Paſch. 10 Jac. Semain's Caſe.

Litt. Rep. 23. The King v. Eaton. S. C.

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6. A Surrender was made to a *Feme Covert*, of Copyhold Lands, with *Power reſerved to her to ſurrender it to ſuch Uſes as ſhe by Writing, or Laſt Will, in the Preſence of 3 Witneſſes ſhould direct* or appoint. She made a Will in Purſuance of her Power executed in the Preſence of 3 Witneſſes, and gave it to her Daughter and Heir. Afterwards ſhe made a Surrender, together with her Husband, to the Uſe of her Husband and his Heirs; But this was made in the Preſence of 2 Witneſſes only, who ſubſcribed their Names (as Witneſſes;) but the Deputy Steward, who took the Surrender, had ſet his Name to it. On a Bill by the Husband after the Wife's Death to eſtabliſh this Surrender, who would have the Steward to be conſidered as a third Witneſs, the Daughter, the Defendant, pleaded a Title by the Will, and alſo demurred, for that the Plaintiff's

Plantiff's Title, if any, was only at Law, and he might bring Ejectments. Ld. Chancellor ſeemed to think the Plea good, as a Plea of the Defendant's Title, and the Demurrer good likewiſe, as a Demurrer to the Plaintiffs Title. But at laſt he over-ruled the Plea, and allowed the Demurrer. Abr. Equ. Caſes 42. Trin. 1728. Cotter v. Layer.

7. If a Copyholder after Admittance ſurrenders the Lands to the Uſe of his Laſt Will, and gives them to J. S. but the Will is not atteſted by any Witneſs, yet J. S. is well intitled to the Lands; per Ld. Chancellor. Barnard. Chan. Rep. 11, 12. Paſch. 1740. Tuffnell v. Page.

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(K. a) Surrender. Take. Who ſhall take by the Deſcription. And what is Certainty ſufficient. Averment.

1. IT is not neceſſary that upon Surrenders of Copyholds, the Name of the Party to whoſe Uſe the Surrender is made, be preciſely ſet down, *if by any Manner of Circumſtance the Grantee may be certainly known, it is ſufficient*, and therefore a Surrender made to the *Archbiſhop of Canterbury*, or the *Lord Mayor of London*, or the *High Sheriff of Norfolk*, without mentioning either their Chriſtian Name or Surname, are good enough, and certain enough, becauſe they are certainly known by this Name without farther Addition. Co. Comp. Cop. 49. S. 35.

2. So if I ſurrender to the Uſe of the *next of my Blood*, to the Uſe of *my Wife*, to the Uſe of *my Brother or Siſter*, the Surrenders are good without any Additions, becauſe the Grantee may certainly be known by theſe Words. Co. Comp. Cop. 49. S. 35.

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4. If a Copyholder will ſurrender to the Uſe of the *right Heirs of J. S. he being alive*, this is void, becauſe it cannot take Effect according to the Intent of the Grantor; for he would have the Grant to be executed preſently, which cannot be, in regard that J. S. can have no Heir till after his Death. Co. Comp. Cop. 49. S. 35.

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(I. a) Surrender to the Uſe of a Will.

Dal. 76. pl. 3. S. C. for he had reſpect to that in making his Surrender, and by his ſaying he ſurrendered all his Land

1. A. Seiſed of Copyhold Lands deviſed a certain Parcel of them to his Wife for Life, Remainder to his Brother and his Heirs, and *afterwards in Preſence of* 3 *Perſons of the Court ſaid to them, I have made my Will as I would have it, and here I ſurrender all my Copyholds Lands into your Hands accordingly*; by this not all his Copyhold Lands are ſurrendered, but thoſe only mentioned in his Will. 3 Le. 18. pl. 43. 14 Eliz. B. R. Anon.

accordingly, he ſhewed that his Intent was only to paſs thoſe Lands that were deviſed by the Will. ——Here was no Queſtion about the validity of the Surrender which was *only by Parol, and into the Hands of the* 3 *Tenants of the Court*, but it is not ſaid, *in Court*, and indeed the Caſe cannot well be ſuppoſed to be in Court for then the Surrender had been to the Lord or Steward, and there can be no Reaſon why a Surrender in Court by Words ſhould be of more Validity then a Surrender by Words out of Court. G. Treat. of Ten. 257.

2. A. deviſed that B. ſhould have a Copyhold in Fee, (or deviſed a Copyhold to B. for ever) and afterwards a Surrender is made unto the Lord *to grant* the Copyhold *according to the Will*; the Lord may grant to B. in Fee. Godb. 137. pl. 162. 29 Eliz. B. R. Allen v. Patſhall.

Supplement to Co Comp. Cop. 81. S. 15. S C. — Gilb. Treat. of Ten. 258, 259. S. C.

3. A. Copyholder in Fee deviſed to his Wife for Life, and that ſhe ſhould ſell the Reverſion for Payment of his Debts, and afterwards he ſurrendered to the Uſe of his Wife for Life *according to the Will* and Deed [and died.] It was adjudged, that ſhe might ſell this becauſe in his *Surrender* he *referr'd to his Will*, and afterwards ſhe ſurrendered upon Condition to pay 12 l. this was held to be a good Sale according to the Will. Cro. E. 68. B. R. Hill. 29 & 30 Eliz. Bright v. Hubbard.

4. A Copyholder ſurrenders to the Uſe of his laſt Will, and he afterwards makes a Will, *the Lands do not paſs by the Will, but by the Surrender*; for *the Will is only declaratory of the Uſes* of the Surrender. Bulſt. 200. Paſch. 10 Jac. Semain's Caſe.

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(L. a) In what Caſes a Surrender is neceſſary.

A Copyholder *cannot transfer his Eſtate but by Surrender*; the Reaſon is, *becauſe he has only an Eſtate at Will, which is determined when he takes upon him to grant it over*; for that is a plain Declaration of his Intent, that he deſigns to hold the Land no longer; ſo that he muſt ſurrender to the Lord, and then he may grant another Eſtate at Will, which now the Lord is compellable to do to him to whoſe Uſe the ſurrender is made. Becauſe the Copyholder now has that ſettled Intereſt and Eſtate in the Land, that his Heirs ſhall inherit the Land, whether the Lord be willing or not; and ſo a Copyholder hath Power over his Eſtate, and not the Lord; therefore 21 E. 4. Brian ſaid, that if the Lord enter upon his Copyholder, he might have Treſpaſs. So far it is now from being a Determination of the Copyholder's Eſtates. Gilb. Treat. of Ten. 146.

2. A Copyholder in Fee ſurrender'd to the Uſe of his Will and *deviſed* his Copyhold Land *to his Wife, and that if ſhe had any Iſſue by him, then to ſuch Iſſue at the Age of 21 Years, and if he had no Iſſue by her, then ſhe to chuſe 2 Attornies, and they to make a Bill of Sale of the Lands to her beſt Advantage*; the Court held that ſhe hath Authority by the Will to name 2 Attornies, who ſhall ſell, and that they may make Sale and the Vendee ſhall be in by the Will, and there needs not any new Surrender. Cro. J. 199. pl. 30. Mich. 5 Jac. B. R. Brent v. Sheppard.

3. *I. S. a Copyholder in Fee ſold all his Copyhold and other Lands to J. C. by Indenture of Bargain Sale, and the Leſſee of the Manor entered* and took Poſſeſſion, and afterwards *J. S. died ſeiſed*, and *W. S. his Son and Heir was admitted upon Preſentment of the Homage, that his Father died ſeiſed, and that the ſaid W. was his Heir*, and afterwards *W. S. ſurrendred to the Uſe of the Plantiff, who was admitted and brought Ejectment*; It was agreed that tho' a Copyholder cannot convey his Copyhold Eſtate to a Stranger without Surrender and Admittance, yet he *may grant it to the Lord of the Manor out of Court by Bargain and Sale*, becauſe the Cuſtom is not between the ſaid Lord and Tenant, but between the Tenants themſelves only; and Judgment for the Plaintiff. Win. 66. 67. Paſch. 21 Jac. C. B. Haſſet v. Hanſon.

* This is miſprinted and ſhould be Chan. Caſes 39. —3, Chan. Rep. 4 S. C. in totidem Verbis.

4. D. *agreed for the Purchaſe of a Copyhold*, and purſuant to that Agreement a *Surrender was made out of Court to his Uſe*, then *he deviſed all his Lands to R. B. &c. and died before Admittance*; It was decreed that the Copyhold Lands ſhall paſs becauſe the Teſtator had a Title in Equity to recover them, and the Vendor ſtood ſeiſed for him till a legal Conveyance could be made. 9 Mod. 75. Marg. cites * 2. Chan. Rep. Trin. 15 Car. Davie v. Beardſham.

5. If a *Copyholder ſurrenders* his Copyhold, *he cannot have it again unleſs by Surrender*. Mar. 21. pl. 48. Paſch. 15 Car. Anon.

For the Mortgagor has no Eſtate in him whereof to make any Surrender.

6. Copyholds *in Mortgage may be deviſed* without the Formality of a Surrender to the Uſe of a laſt Will, for the Copyholder has only an Equity of Redemption. Vern. R. 69. pl. 65. Mich. 1682. Brent v. Beſt.

Ch. Prec. 322. in Caſe of Greenhill v. Greenhill.——Toth. 142. cites Mich. 14 Car. Highgate v. Highgate S. P. —— 3. Wms's Rep. 358. pl. 96. Trin. 1735. King v. King and Ennis. S. P.

7. *Surrenderee of Copyhold Lands aſſigns them, together with Freehold Lands, to J. S.* Per Lord Chancellor the Copyhold could not paſs but by Sur-

Surrender only and not by Conveyance. 2 Ch. Cafes 43. Hill. 32 & 33 Car. 2. Knight v. Cook.

8. *Cuſtomary Lands within the County Palatine of Cornwall*, tho' they paſs by Leaſe and Releaſe, yet by the Cuſtom cannot be deviſed without a Surrender, yet one, who has *an equitable Intereſt* only, and not the legal Eſtate, may *deviſe* them without making a Surrender. 2 Vern. R. 679. pl. 604. Hill. 1711. Greenhill v. Greenhill. Ch. Prec. 320. S. C. ——G. Equ. Rep. 77. S.C.

9. Where a Perſon *purchaſes Land in the Name of another*, or *has only an equitable and not the legal Eſtate*, he may deviſe the ſame without a Surrender; per Parker C. 10 Mod. 519. 529. Mich. 10 Geo. 1. in Canc. Acherley v. Vernon. 9. Mod. 68. S. C. and affirmed in the Houſe of Lords.

10. An *Equity of Redemption* of a Copyhold *may be deviſed without being ſurrendred* to the Uſe of a Will. 3 Wms's. Rep. 358. pl. 96. Trin. 1735. King v. King and Ennis.

(M. a) Surrender. Want of Surrender, or defective Surrender. Supplied in Equity. In what Caſes.

1. A Copyholder in Fee *Surrenders to* the Uſe of *one, and* to *his Heirs, upon Condition of Redemption*, writes down his Debts, and *willeth Part* of his Copyhold *to be ſold for Payment of his Debts* after his Death; one of the Creditors payeth the Money at the Day to the Mortgage, who nevertheleſs inrolleth the Surrender afterward, this other Creditor complains againſt him and the Heir in Chancery, and had a Decree that the Copyhold ſhould be ſold for the Payment of Debts, and the Remainder of it (if any were) ſhould deſcend to the Heir, for altho' the Deviſe of the Copyhold be void, yet to take it from the Surrenderee, (who held it only for Money to be paid) and to pay him and the other Creditors therewith, hath good Warrant in Equity, and the Heir hath no Wrong, for that it was gone from him by the Surrender lawfully. Cary's Rep. 9, 10. cites 41 Eliz.

2. *A. purchaſed a Copyhold for the Lives of himſelf and B. and C. his Sons. A. alone paid the Fine.* A. *agreed to ſurrender all his Title to J. S. who paid the Purchaſe Money agreed upon. A. died before any Surrender made.* Then J. S. died. His Executors brought a Bill againſt the Sons of A. to compel them to ſurrender the Copyhold according to the Agreement; and decreed accordingly. Chan. Rep. 272. 18 Car. 2. Greenwood v. Hare.

3. A. *covenanted with the Truſtees to ſettle Freehold Lands on himſelf and M. his Wife for Life* for Part of her Jointure, Remainder over, *and to ſurrender certain Copyhold Lands to the ſame Uſes*, and in going to make a Surrender he fell Sick by the Way, but made a Letter of Attorney to others to do it, but died before it was done. The Remainders limited were *to the Heirs Male of the Body of A. by M.* Remainder *to the Heirs Male of his Body*, Remainder *to B. Brother of A. and the Heirs Male of the Body of B.* Remainder *to the Heirs of A.* The Heir Male of B. prayed a Conveyance of the Copyhold; Lord Keeper ſaid, that if A. had had a Son by a former Wife, no Relief could be had againſt him upon this Covenant, which as to the Plaintiff was meerly voluntary, and if A. and B. where both living, B. could not inforce A. to execute the Covenant tho' M. might, and diſmiſs'd the Bill. Ch. Caſes 243. 14. January 1674. Bellingham v. Lowther and Wentworth. S. C. cited Arg' 2. Wms Rep. 249. in Caſe of Oſgood v. Strode.

4. Supplied in Favour of a *Jointreſs*. Fin. R. 388. Trin. 30 Car. 2. Marlow v. Maxie & al'.

5. The *Plaintiff* having *contracted with the Defendant's Father for the Purchaſe of a Copyhold Eſtate*, the *Plaintiff paid the purchaſe Money*, and the *Defendant's Father agreed to ſurrender the Premiſſes at next Court, and ſaid, he had made a Surrender lately to the Uſe of his Will*, which would enure to the Benefit of any Purchaſor, but *before next Court Day, and any Surrender made, the Defendant's Father died.* This Court decreed the Defendant when he came of Age to ſurrender effectually the Premiſſes to the Plaintiff, and the Lord of the Manor preſently to admit the Plaintiff Tenant to the Premiſſes. Chan. Rep. 218, 219. 33 Car. 2. Barker v. Hill.

6. Surrender being *to one Copyholder only was ſupplied* againſt the Heir in Favour of the younger Children. Vern. 132. pl. 120. Hill. 1782. Hardham v. Roberts.

7. *By the Cuſtom* of the Manor of Yelminſter Prima in Devonſhire, *every Copyhold Tenant* of that Manor *may, in the Preſence of two Witneſſes, nominate his Succeſſor*, and ſuch Nominee ſhall enjoy the Lands after him for Life, *and the Perſon who nominates may except any Part of the Lands to any other Perſon, yet the Nominee continues Tenant to the Lord for the whole, but the Perſon to whom any Part is excepted ſhall enjoy any Part during his Life; and if any Tenant dies ſeiſed, leaving a Wife, and makes no Nomination*, then *the Wife ſhall have the Tenement during her Life, elſe it goes to the Lord; a Copyholder by his Will intending to give the greateſt Part of his Eſtate to his Godſon, and the other Part to his Wife*, the *Wife perſuades him to nominate her to the whole, and that ſhe would give the Godſon the Part deſign'd for him*; Decreed againſt the Wife, notwithſtanding the Statute of Frauds and Perjuries. Chan. Prec. 3. pl. 3. Hill. 1689. Deveniſh v. Baines.

8. Chancery will help the want of a Surrender in Caſe of a *Purchaſor*; per Hutchins. 2 Vern. 165. Trin. 1690. in Caſe of Hitchox v. Sedgwick.

9. Equity will ſupply the want of a *Surrender of a Copyhold as well for an Elder Son as a Younger, in Caſe of Gavelkind Copyhold*, if it appears to be the Intent of the Will, that the Eldeſt Son ſhould have the Copyhold, *paying a Legacy thereout to the Youngeſt Son*; Per Lds. Commiſſioners. 2 Vern R. 163. pl. 152. Trin. 1690. Bradley v. Bradley.

But A. deviſed his *Copyhold* being Borough Engliſh to his Eldeſt Son and Houſes in London to his Youngeſt Son. The Houſes were ſoon after burnt down and the Youngeſt Son never entred upon them. The Court therefore as *this Caſe was circumſtanc'd* would not ſupply the Defect of a Surrender. 2 Vern R. 265. pl. 251. Paſch. 1692. Cooper v. Cooper.

10. A Copyholder in Fee, having Iſſue two Daughters, *deviſed a Copyhold Eſtate to his Younger Daughter, whereby her Fortune was made much more conſiderable than the eldeſt Siſter's*, and there being no Surrender made to the Uſe of his Will, the Queſtion was, Whether that Defect ſhould be ſupplied in this Court; for altho' that Defect is generally ſupplied, where it is for a Proviſion for a Wife or Child, yet in this Caſe, in Caſe it were not ſupplied, her Fortune would have been equal to her other Siſter's and the Copyhold would have deſcended equally to them both; yet notwithſtanding it was ſupplied here, being intended a Proviſion for a Child, tho' it made her ſuperior to her elder Siſter in Fortune. Ex Relatione M'ri Poley. 2 Freem. Rep. 234. pl. 305. Baker v. Jennings.

11. Decreed that all Deviſes by Copyholders *for the Uſe of Children or Creditors*, and all Charges made by them upon their Lands for the Benefit of Children or Creditors, will be good in a Court of Equity, though there was no Surrender to theſe Uſes. 3 Salk. 84. pl. 5. Paſch. 11 W. 3. Pope & al'. v. Garland.

12. A *younger Son* brings a Bill, and *ſurmiſes that a Copyhold* which his Father had *deviſed to him* by Will *was ſurrendered* to the Uſe of his Will, or however that being for the Advancement of a Child, it ought to be made good here. He made no Proof of any Surrender, nor that a Court was called for that Purpoſe, nor any Proof that any of the Court Rolls were loſt (which was pretended) and *he was well provided for, without this Copyhold*, and the *elder Brother was in Poſſeſſion* 20 *Years, by Conſent of the Plaintiff*; ſo the Bill was diſmiſſed, with Coſts. Abr. Equ. Caſes, 123. Paſch. 1700. James v. James.

13. Chancery ought not to ſupply the want of a Surrender in Favour of a *Grandſon*, but only of a Son or Daughter, and not then neither if it was *to diſinherit the eldeſt Son*, but prior Proviſion is not material, In Domo Procerum, by which a Decree of Lord Somers's was reverſed. 1 Salk. 187. pl. 6. in Time of W. 3. Kettle v. Townſend. 2 Vern. 625. S. C. cited in the Caſe of Litton-Strode v. Ruſſel and Falkland.

—— Upon citing the Caſe of Kettle v. Townſend by Mr. Pooley, in the Caſe of **Watts v. Bullas**, Mich. 1702. the Maſter of the Rolls then in Court with Ld. K. Wright ſaid, that it was his Opinion, that ſuch a Deviſe without a Surrender ought to be made good to *Grand-Children* as well as to Children, and that if the ſame Caſe was to come on then in the Houſe of Lords it would be ſo ruled, and that he had and would decree it ſo. Wms's Rep 61.

And in a Note there added to the Report of the Caſe of Watts v. Bullas, it is ſaid, that the like was declared by Ld. Harcourt, in the Caſe of **Freeſtone v. Rant**, Trin. 1712. and the Note ſays, that it is obſervable, that the Caſe of Kettle v. Townſend being cited before Ld. Cowper in the Caſe of **Furſaker v. Robinſon**, (Mich. 1717) his Lordſhip doubted thereof, in regard that the *Grandfather, by the Act of 43 Eliz. for maintaining the Poor, is bound to maintain his Grand-Child*, which he ſaid he believed was not taken Notice of in that Caſe. Ibid. 61.

14. *Ceſty que Truſt* of a Copyhold *deviſed* it to *his Wife*, and the Truſtees were decreed to ſurrender accordingly. 2 Vern. 498, 499. pl. 449. Paſch. 1705. Burkit v. Burkit.

15. A Mortgage Surrender was made to A. to ſecure 200 l. but was not preſented at the next Court, and ſo was void according to the Cuſtom of the Manor. Some Years after the Mortgagor (the Mortgage Money not being paid to A.) *agrees to ſell to B.* for 400 l. *but B. having Notice of the former Surrender takes a Surrender in C's. Name who had no Notice*, and agrees to become the Purchaſor, and pays the Conſideration Money; and upon a Bill for Relief by A. againſt B. and C. C. pleads his being a Purchaſor without Notice, the Preſentment of his Surrender and Admittance, and the Non-preſentment of the Surrender to A. till long after. Adjudged that this Notice was ſufficient to affect C. and decreed C. to pay A's. Money or ſurrender to him; and though C. did not employ B. to purchaſe for him, or knew any thing of it till after B. had agreed and taken the Surrender in B's. Name, yet he *approving it afterwards* made B. his Agent *ab Initio*. Decreed at the Rolls and affirmed by Lord Cowper. 2 Vern. 609. pl. 547. Paſch. 1708. Jennings v. Moore, Blincorne & al'.

16. Chancery will not ſupply the want of a *Surrender of a Copyhold for a Deviſee to diſinherit an Heir at Law*; per Tracy J. 3 Ch. R. 187. Trin. 7 Ann. Litton, alias, Strode v. Falkland.

17. It will help no further than a *Son*, a *Wife*, or a *Creditor*; per Trevor Ch. J. and Ld. Chancellor. 3 Chan. Rep. 187, 188. Trin. 7 Ann. 3 Chan. Rep. 220. Arg. ſays, that ſo it is of Charitable Uſes.

18. A. on the Marriage of B. his Son makes a Feoffment of certain *Freehold Lands by the Name of ſuch and ſuch Farms in Truſt for B.* for Life, then to his intended Wife for Life, then to his firſt Son &c. and for want of ſuch Iſſue, then *in Truſt for the right Heirs of B.* It happened, that 8 *Acres*, *Part of one of thoſe Farms*, *were Copyhold*, *and there was a Covenant* in the Deed, *that A. ſhould ſurrender thoſe* 8 *Acres* to the Uſes as the Freehold Lands were therein limited. B's. Wife dies without Iſſue, ſo that Truſt of the Fee-ſimple was in *B.* who *mortgages the Farm* 2 Vern. 636. pl 564 S. C. Ld. Chancellor took it, that nothing was intended to paſs but the Freehold, and affirmed the Decree

Farm of which the 8 Acres were Parcel by the Name of ſuch a Farm, with the general Words, All and ſingular the Lands and Tenements, Parcel thereof, or uſually occupied therewith &c. but does *not mention the 8 Acres of Copyhold by Name, nor is there any Covenant in the Mortgage Deed to ſurrender them.* B. dies, and his Heir conveys the Equity of Redemption to the Mortgagee, and afterwards A. at the Requeſt of the Heir of B. ſurrenders the 8 Acres Copyhold to J. S. to whom A. was indebted by Judgment. Upon a Diſpute between the Mortgagee and J. S. it was ſaid, per Cowper C. that the Copyhold Lands were never by the Mortgage under any *ſpecifical Lien*, and that the Mortgage reciting the Settlement in which the Copyhold Lands appear, and the Mortgagee taking no Care to get a Conveyance of them, nor ſo much as naming them, he ſhould hold, that if the Freehold Lands were ſufficient the Copyhold ſhould not paſs by the Deed, though there was no Creditor or Purchaſor in the Caſe, and if ſo J. S hath both *Law, and* the better *Equity* on his Side; And he rely'd upon that ſubſtantial Difference, where there is a *ſpecifick Lien, and where not*, which diſtinguiſhes this Caſe from that of **Taylor v. Wheeler**, where the Copyhold was ſpecifically bound by the Mortgage. G. Equ. R. 13. Hill. 7 Ann. Oxwith v. Plummer.

19. Bill to have an Account of the real and perſonal Eſtate of their Father, and a Partition of his real Eſtate.

The Caſe was, B. having ſeveral Freehold and Copyhold Lands, *deviſes all his Lands, Goods and Chattels to his three Sons, equally to be divided between them, and deviſes over and above this* 100 l. *to his Eldeſt, provided he gives a lawful, good, and general Releaſe to his two younger Brothers,* and *by his Codicil appoints, that if one of his younger Sons ſhould die or marry in his Minority without Conſent of his Executors, then his Portion to go the other younger Son.*

2d Point, if the Copyhold Lands ſhall paſs by his Deviſe without a Surrender to the Uſe of his Will? Ld. C. was of Opinion, that the Copyhold Lands do not paſs by the Deviſe for want of a Surrender to the Uſe of the Will, though in the Caſe of younger Children, becauſe *there are Freehold Lands to ſatisfy the Words of the Will.* MS. Rep. Mich. 12 Ann. Canc. Bullock v. Bullock.

Defective Surrender of a Copyhold to the Uſe of a laſt Will ſupplied, eſpecially where it is *for the Benefit of the Deviſor's Children.* MS. Tab. Feb. 18. 1715. Lloyd v. Burton. ——S. C. cited 3 Wms's Rep. 285. by the Ld. Chancellor, Trin. 1734, as decreed firſt by Sir John Trevor, at the Rolls, in Trin. 1712,

20. Andrew Burton was ſeiſed of Freehold, Leaſehold, and Copyhold Land, and ſo ſeiſed *made a Surrender* of his Copyhold *to the Uſe of his laſt Will* (he *delivered the Surrender to his Tenant of the Copyhold* [*who was one of the cuſtomery Tenants of the Manor*] *to be preſented at the next Court, but took it back from him, and both the ſaid Andrew and his Tenant were at a Court held ſhortly after, but did not preſent the Surrender*) *whereby he deviſed his Copyhold to Andrew his Eldeſt Son, and the Heirs Male of his Body*, the Remainder *to Cornelius his 2d Son*, who was *by a 2d Venter and the Heirs Male of his Body*, Remainder *to Barton his 3d Son and the Heirs Male of his Body*, Remainder *to his own right Heirs.* The *Deviſor died, leaving the ſaid 3 Sons and one Daughter, who was by the firſt Venter* the *eldeſt Son entered* upon the Copyhold, *and received the Rents and Profits* of it during his Life, *but did not preſent the Surrender, and died without Iſſue*, whereupon his *Siſter of the whole Blood*, Wife to the Defendant Floid, *claimed as Heir at Law to her Brother*, whom ſhe conceived to be ſeiſed in Fee for want of a Surrender; the Tenant attorned to the Defendant in right of his Wife, whereupon the Plaintiff, 2d Wife of Andrew the Father, brought her Bill as Guardian to her two Sons, Cornelius and Barton, to have the Copyhold according to the Will; the Counſel for the Defendant inſiſted, that the want of a Surrender ought not to be ſupplied in this Caſe, becauſe *the younger Sons have an ample Proviſion*

viſion by the Will, beſides the intended Copyhold, and that the Court of Equity ſupplies the want of a Surrender againſt the Heir at Law only where the intended Eſtate is the ſole Proviſion made for thoſe to whom ſuch Eſtates are deviſed; they further *inſiſted, that* tho' the Court will ſupply the want of a Surrender for the Benefit of younger Children where there is a ſufficient Proviſion for them beſides, yet in this Caſe it ought not, becauſe *the Acts of* Andrew *the Father, ſubſequent to his making the Surrender, amount to a Revocation of it*, and manifeſt his Deſign to be, that the Surrender ſhould not be preſented, *as his taking it back from his Tenant to whom he had given it to preſent, and his neglecting to preſent it at Court at which he was preſent*, and had an Opportunity to do it, but Trevor, Maſter of the Rolls, decreed for the Plantiff, and as to there being a ſuffiicent Proviſion by the Will for younger Children beſides the Copyhold, he ſaid that the Parent was the only Judge of that, and as to thoſe Acts of the Teſtator, which it was ſaid amounted to a Revevocaton of the Surrender, he ſaid they did not, and that if it had been the Teſtator's Deſign that the Copyhold ſhould not be ſurrendered to the Uſe of his Will, he ſhould have revoked it, and obſerved that there *was not ſo much as Parol Evidence of a Revocation*. This Cauſe was reheard before Harcourt Lord Chancellor, who affirmed the Maſter's Decree, and that the Defendants ſhould join in a Surrender purſuant to the Will. MS. Rep. Mich. 12 Ann. Canc. Burton v. Floid and Ux'.

and affirmed by the Ld. Chancellor in Mich. 1713. and in a Note there by the Reporter marked [A] he cites the S. C. from the Regiſter's Book accordingly.

21. It was deny'd to be ſupply'd in Caſe of a *Wife* to whom the Huſband deviſed it by his Will, it being ſuggeſted, that ſhe was other wiſe amply *provided for out of the Teſtator's Freehold and perſonal Eſtate, but the Heir at Law had no other Proviſion but the Copyhold which was but* 30 l. *per Annum*, whereas the Proviſion for the Wife was according to her Fortune, which was upwards of 3000 l. but the Court ſent it to the Maſter to inquire into the Facts and report it ſpecially before they could make any Decree in it. G. Equ. R. 121. Mich. 2 Geo. 1. in Canc. Biſcoe v. Cartwright.

22. A. ſeiſed of Copyhold Lands, and alſo of a conſiderable Eſtate in Fee, which he had ſettled on a Papiſt, contrary to the Statute of 11 & 12 *W.* 3. *Cap.* 4. to ſurrender the Copyholds, for he had *made a Letter of Attorney to W. R. to ſurrender* them, and the *Steward or Tenant refuſed to accept the Surrender, inſiſting that they ought to keep the Letter of Attorney*, upon which they broke off, and no Surrender was made; And Cowper C. thought this a lucky Accident in Favour of the Heir, which Equity ought not to deprive him of any more than if the Copyholder and the Lord had *diſagreed about a Fine*, which had prevented a Surrender, and that this being a *voluntary Conveyance* was not to be aſſiſted in Equity, as a *Conveyance to a Wife or a Child* would be, but it did *not appear that A. had done all in his Power to make the Surrender*, and therefore the Court declared that the Title to the Copyholds was in the Heir. Wms's. Rep. 354, 355. Trin. 1717. Vane v. Fletcher.

23. *But if the Heir had done any Thing to prevent* the Acceptance of the Surrender it had been material; per Cowper C. Ibid. 355.

24. Sir Charles Rawley *deviſed Copyhold Lands to his Daughters*, without ſurrendering them to the Uſe of his laſt Will and died; Carew Rawley *his Son and Heir entered and mortgaged them for* 400 l. the *Mortgagee aſſigned his Mortgage* to one of the Plaintiffs. The firſt Queſtion was, whether the Want of a Surrender ſhould be ſupplied for the Benefit of the Daughters, ſeeing they had a very large Proviſion beſides the Copyhold Lands? The ſecond was, whether the Mortgage which was taken and aſſigned without Notice of Sir Charles's Deviſe, ſhould be firſt diſcharged? Cowper Ld. Chancellor, as to the firſt decreed that the Want of a Surrender ſhould be ſupplied for the Benefit of the Daughter

notwithſtanding their other Proviſion, becauſe the Father was the beſt Judge what was a ſufficient Proviſion for them. As to the ſecond he decreed, that the Mortgage being had without Notice ſhould be firſt diſcharged, there having been Laches in the Daughters. MS. Rep. Mich. 4 Geo. in Canc. Weeks v. Gore.

Ibid. 137. The Caſe of Burton v. Loyd, in Ld. Harcourt's Time, is ſaid to be in Point. —3 Wms's Rep. 283. pl. 71. S. C. of Cook v. Arnham, Decreed accordingly.

15. A. had Iſſue two Sons B. and C. B. died, leaving H. a Son. A. being ſeiſed in Fee of Freehold and Copyhold Lands, devis'd all his Meſuages and Lands, whether Freehold or Copyhold, *to H. his Grandſon and Heir at Law, for Life*, Remainder *to the firſt and other Sons of H. in Tail*, Remainder *to Daughters of H. in Tail*, Remainder *to C. in Fee.* A. died without making any Surrender to the Uſe of his Will, but had *made other Proviſion for C.* H. died without Iſſue, but ſurrender'd the Copyhold to the Uſe of his Will, and devis'd it to his Mother in Fee. It was decreed at the Rolls, that this being no preſent Proviſion intended for C. the Defect of a Surrender ſhould not be ſupply'd; But Ld. C. Talbot revers'd the Decree, and order'd the Defect to be ſupplied; and as to other Proviſion being made for C. he ſaid, that it had been often held here, that *the Father is the ſole Judge of the Quantum of the Proviſion*, and as to this Remainder to C. not being to be intended as a preſent Proviſion, he held this to be a Proviſion, though not ſo good an one as a preſent Proviſion; That in this Caſe it could not be ſaid, that the Heir was diſinherited, for when this Remainder is to take Place, C. then becomes Heir at Law himſelf by the Default of Iſſue of H. Nor can it be ſaid that there is an Heir unprovided for; For though he is made only Tenant for Life, yet there are Limitations to all his Iſſue, who are to take before C. the Plaintiff. Caſes in Equ. in Ld. Talbot's Time, 35. Trin. 8 Geo. Cook v. Arnham.

16. The Defect of Surrenders has been ſupply'd even *where the Copyhold intended to paſs has made but Part of the Proviſion*, and ſo not liable to the Objection of leaving the Child utterly unprovided for in Caſe the Defect was not ſupply'd; For the Court has never yet enter'd into the Conſideration of the Quantum proper for each Child; Per Ld. C. Talbot. Caſes in Equ. in Ld. Talbot's Time, 36. Trin. 1734. in Caſe of Cook v. Arnham.

So in Caſe of *Legatees* it will not be ſupply'd. Abr Equ. Caſes 123. pl. 12 Hill. 1699. Rafter v. Stork.

17. A. ſeiſed of Freehold and Copyhold Lands, *deviſed all his Real and Perſonal Eſtate for Payment of his Debts*, but made no Surrender of the Copyhold. The Perſonal Eſtate and the Freehold were not ſufficient to pay the Debts. Ld. Cowper would not ſupply the Defect, becauſe the Words did not expreſs the Copyhold, or ſhew any Intention to paſs it; But it was ſaid, that where there *was no Freehold* at all the Maſter of the Rolls had ſupplied the Defect of a Surrender. Ch. Prec. 407. pl. 275. Trin. 1715. Challis v. Casborn.

It is the Circumſtances of the Caſe that induce the Court to do it, for Anon.

18. Surrender is not to be ſupplied where it will put the younger Children in *better Condition than the Elder.* Mich. 1729. in Caſe of Roſs v. Roſs.

they will not to do it in all Caſes. 2 Freem. Rep. 115. pl. 128. agreed Hill. 1690.

This the Reporter admits to be ſo, but obſerves, if it were but an Equitable Charge, and the legal Eſtate of the Copyholder had deſcended to the Heir,

19. One *by Will charges all his Wordly Eſtate with his Debts*, and *dies ſeiſed of Freehold and Copyhold Eſtates, which he particularly diſpoſes of by the Will*; the Copyhold, though not ſurrendered to the Uſe of the Will, ſhall yet be applied to the Payment of the Debts Pari paſſu with the Freehold; and it had been ſufficient if the Teſtator had only ſaid, *I charge my Copyhold Land with the Payment of my Debts*; in which Caſe Equity would have ſupplied the Want of a Surrender. 3 Wms's. Rep. 96, 97. Hill. 1730. Harris v. Ingledew.

that would have made it neceſſary that the Heir ſhould be a Party, becauſe other-

wiſe

wiſe the lagal Eſtate of the Copyhold could not be conveyed to a Purchaſor; but if it had appeared (which he thinks did not) that the Heir at Law had, ſince the Teſtator's Death, conveyed away all the Copyhold Eſtate, then indeed the Grantee of the Heir being capable of conveying to the Purchaſor, it might not be neceſſary to make the Heir a Party. 3 Wms's Rep. 97.

20. Bill by the Plaintiffs for an Injunction againſt the Defendant, eldeſt Son of a Copyholder, to make good the Defect of a Surrender of a Copyhold in Favour of a *Will, whereby the Father gave this Copyhold, and all other his Eſtate for the Maintenance of the Plaintiffs, his younger Children, till* 21, *and then to be divided amongſt the Plaintiffs, and the Defendant to have a Share.* Lord Chancellor ſaid the Rule is, when the eldeſt Son is totally diſinherited not to interpoſe, and *this is very near to a total Diſinheriſon*, the Eldeſt not being to have any Thing till the Youngeſt are of Age. Injunction deny'd. MS. Rep. Mich. Vac. 1733. Hicken & al'. v. Hicken.

21. If a Man *deviſes all his Lands, Tenants, and Hereditaments in Dale, in Truſt to pay his Debts and Legacies, and the Teſtator has ſome Freehold and ſome Copyhold Lands*, there, only the Freehold Lands ſhall paſs; for his Will muſt be intended of ſuch Lands and Tenaments, as are deviſeable in their Nature; otherwiſe if the Teſtator had ſurrendred his Copyhold Lands to the Uſe of his Will, becauſe this ſhews he did intend to deviſe his Copyhold; but even in the firſt Caſe, *if the Freehold were not ſufficient to pay his Debts*, when the Teſtator deviſes all his Lands in Truſt to pay his Debts, it ſeems rather than the Debts ſhould go unpaid, that the Copyhold ſhall in Equity paſs. 3 Wms's Rep. 322, 323. pl. 83. Trin. 1734. Haſlewood v. Pope.

22. Where a Man *deviſes his real Eſtate to be ſold to pay Debts and certain pecuniary Legacies, and ſubject to his Debts and Legacies deviſes his Perſonal Eſtate to his Siſter*, this Court will not ſupply the Defect of a Surrender of the Copyhold to the Uſe of the Will if *the other Eſtates ſuffice to pay the Debts.* Caſes in Equ. in Ld. Talbot's Time. 78. Paſch. 1735. Mallabar v. Mallabar.

(N. a) Operation and Effect of a Surrender.

1. A *Copyholder made a Leaſe for Years, with Licence &c. rendering Rent*, and afterwards he *ſurrendered the Reverſion, with the Rent, to Uſe of a Stranger who was admitted*; It was held by Rhodes and Windham Juſtices, that the Surrender and Admittance were in Nature of an Inrolment, and ſo amount to an Attornment, or at leaſt do ſupply the want of it. 1 Le. 297. pl. 408. Hill. 28 Eliz. C. B. Anon. 3 Le. 197. pl. 247. Hill. 29 Eliz. C. B Anon. S. C. in totidem Verbis

2. *Tenant for Life*, the *Remainder in Fee* of a Copyhold, he in the *Remainder made a Leaſe by Parol*; *Tenant for Life, and he in the Remainder, join in a Surrender to the Uſe of him in the Remainder in Fee*; It was the Opinion of the Juſtices, that the *Leaſe was good againſt him in Remainder*, and that by the Surrender of the Tenant for Life to the Uſe of him in the Remainder, his Eſtate is drown'd in the Fee, and as it were extinct, and cannot hinder the Leaſe to have Operation. Cro. E. 160. pl. 49. Mich. 31 & 32 Eliz. B. R. Dove v. Williot. Le. 174. pl. 243. S. C.

3. The *Fee-Simple of a Copyhold ſurrendred to the Uſe of a Man's Will remains in the Copyholder, and not in the Lord.* 4. Rep. 23. a. Paſch. 39 Eliz. B. R. Fitch v. Hockley. And the Surrenderor ſhall have the Profits. Noy 152.

Hill. 5 Jac. C. B. Allen v. Naſh. —— Cro. E 441, 442 pl 4 S C —— Gilb. Treat. of Ten. 319, 320. cites S. C.

4 If

4. If a Copyholder *ſurrenders* his Land *to the Uſe of a Stranger, in Conſideration that the ſame Stranger ſhall marry his Daughter before ſuch a Day*, if the Marriage ſucceeds not, the Stranger takes nothing by the Surrender; *But* if the Surrender be *in Conſideration, that the Stranger ſhall pay ſuch Sum of Money* at ſuch a Day, tho' the Money be not paid, yet the Surrender ſtands good. Calth. Reading. 36, 37.

4 Rep. 25. b Kite v. Queinton.

5. A *Right* or *Condition* cannot be given or determined by Surrender, but by Releaſe. Cro. J. 36. pl. 11. Trin. 2 Jac. B. R. Hull v. Sharbrook.

6. Copyholder made a Surrender *to the Uſe of his ſecond Son for Life, after the Death of him and his Heirs*; adjudged no good Surrender, for tho' it be good in a Will, yet *Implication is not good in a Surrender*; And in Copyhold Caſes a *Surrender to the Uſe* &c. *is no Uſe*, but an Explanation how the Land ſhall go. Brownl. 127. Hill. 5 Jac. Allen v. Naſh.

7. If there are *two* [*joint*] *Copyholders* and *one ſurrenders to the Uſe of his Will*, and makes his Will &c. and dies, there ſhall be *no Survivorſhip*; cited by Coke Ch. J. as adjudged. Noy. 152. Hill. 5 Jac.

8. Surrender and Admittance in Court *are publick Acts*, whereof every Tenant may take *Notice*, and if Copyholder ſurrender the Reverſion of 2 Parts of his Copyhold in Leaſe, the Surrenderee may avow after Admittance without Attornment. Lev. 40. Trin. 13 Car. 2. B. R. Bluck v. Mole.

9. Surrenderee of Copyhold is within the Equity of 32 H. 8. 3. to bring *Debt* or *Covenant againſt the Leſſee*. 1 Salk. 185. pl. 2. Mich. 3 W. & M. B. R. Glover v. Cope.

10. Admittance *relates* to Surrender, and Surrenderee's *Title* began by the Surrender. 1 Salk. 185. pl. 3. Paſch. 5 & 6 W. & M. B. R. Benſon v. Scott..

Supplement to Co Comp. Cop. 67 S. 1. S. P. in Caſe where the Copyholder does ſurrender

11. *Copyholder in Fee* ſurrendered into the Hands of the Lord *to the Uſe of himſelf and the Heirs Male of his Body*, but *died without Admittance* upon the Surrender. It was unanimouſly reſolved, that without Admitance on the Surrender he continues ſeiſed in Fee as before; for the Lord could otherwiſe have no Remedy for his Fine &c. Holt's Rep. 165. pl. 10. Trin. 5 Ann. Brown v. Dyer.

his Copyhold in the Court of the Manor to the Uſe of the Lord himſelf (which he may do) there, by ſuch a Surrender, the Lord is immediately veſted in the Lord without any other Act done or required, becauſe the Lord cannot take a Surrender to make thereof an Admittance to himſelf.

(O. a) Operation and Effect of a Surrender. In what Caſes it ſhall be a Diſcontinuance.

1. ADmitting the Copyhold Lands may be intail'd, then a Surrender thereof by the Tenant in Tail is a Diſcontinuance to *put the Iſſue to his Action*; for he muſt take it ſubject to all the Inconveniencies which an Eſtate Tail at Common Law is ſubject to. Cro. E. 717. pl. 43. Mich. 41 and 42 Eliz. C. B. Eriſh v. Reeves.

2. If there hath been a *Cuſtom* in a Manor *that Plaints ſhould be proſecuted* there *in Nature of real Actions*, if *a Recovery* be had upon ſuch Plaints *againſt Tenant in Tail*, it *is a Diſcontinuance*; for ſince the Cuſtom warrants the Recovery, *it is an Incident* to ſuch a Recovery by the Common Law, that it ſhould be a Diſcontinuance, which it ſeems is drawn from the Nature of the Thing; That a Judgment given in a Court of Judicature ought not to be avoided, but by Matter of as high a Na-

a Nature, viz. by a Recovery in a Court of Judicature, and not by the Entry of the Party that hath Right. Gilb. Treat. of Ten. 176. 177.

3. There are Caſes that a Surrender is a Diſcontinuance of an Eſtate Tail in Copyhold Lands, and my Ld. Coke ſays, that a *Surrender by Cuſtom* may bar an Eſtate Tail; But theſe opinions for diſcontinuing by Surrender do not ſeem to be grounded upon that Reaſon or Authority, as the contrary Opinion is; for there are more Cauſes againſt it than for it. Gilb. Treat. of Ten. 178. 179.

(P. a) Surrender. Good in reſpect of the Eſtate of the Surrenderor.

1. A *Woman Copyholder for Life took a Husband*, the *Reverſion of the ſaid Copyhold was granted to* 3, viz. to A. B. and C. *cum acciderit poſt Mortem, Surſum-Redditionem, or Foriſfact'* for their Lives ſucceſſively according to the Cuſtom; the *Husband ſurrendred to the Uſe of A. for Life*, to whom the *Ld. granted it by Copy for the Life of A.* and *A.* and *B. died.* It ſeems to divers Juſtices and Serjeants that C. ſhall not be admitted; for *after the Death of the Husband the Wife may enter, or have her Plaint in Nature of a Cui in Vita*, but during the Life of her Husband the Ld. may retain it in his own Hands in Nature of an Occupant, after the Husband. But further the Husband and the Wife would have releas'd to C. and the Ld. would not receive it, nor hold a Court, but he was enjoin'd in Chancery to hold Court, or to avoid Poſſeſſion. Dyer 364. pl. 38. Trin. 9 Eliz. Roſwell's Caſe.

2. Surrender *by the Heir before Admittance* is good, but this ſhall not prejudice the Lord of his Fine by the Cuſtom of the Manor due to him on Deſcent. 4. Rep. 22. b. pl. 1. Mich. 23 and 24 Eliz. C. B. Brown's Caſe.

After the Death of Tenant for Life *Re, mainder-man* before Admittance may ſurrender the Land, for the firſt Admittance was ſufficient. 4. Le. 111. pl. 226. in the Time of Queen Eliz. Hegger v. Felſton.——The Heir of a Copyholder before his Admittance held by the Copy of his Anceſtor, and ſo he has Title, but a Surrenderee can have no Title before Admittance; Arg. Sty. 146. Mich. 24 Car. B. R. in Caſe of Barker v. Denham.

3. If a *Man ſeiſed* of a Copyhold *in Right of his Wife ſurrenders it to the Uſe of another in Fee, who is admitted* accordingly, and the Baron dies, this is no Diſcontinuance to the Wife or her Heirs, but that the Wife may enter, and neither ſhe nor her Heir ſhall be put to ſue a Cui in Vita. 4 Rep. 23. pl. 4. Paſch. 35 Eliz. B. R. Bullock v. Dibley.

Mo. 596. pl. 813. S. C. adjudged by all the Juſtices becauſe no Livery was made of ſuch Eſtate nor, can a Warranty be annexed to it for the Benefit whereof a Diſcontinuance is admitted. And cites S. P. adjudg'd Mich. 32 and 33 Eliz. C. B. Foxley v. Coſen.——Supplement to Co. Comp. Cop. 80. S. 13. cites S. C.——Gilb. Treat. of Ten. 177. cites S. C. accordingly; for by the Surrender he gives up no more than he had, and therefore could not give away his Wife's Right; tho' before Entry ſhe cannot be ſaid to be Tenant, becauſe the Surrenderee is by the Lord's Admittance made his Tenant, and this is *not like* * *a Feoffment at Common Law*, which being ſo notorious a Way of conveying Eſtates, the Wife's Entry was taken away, the whole Eſtate being paſſed away to the Feoffee for the Benefit of Strangers, who could never have known whom to have brought their Præcipe againſt, if the Eſtate did not paſs by ſo notorious a Conveyance; and if ſhe ſtill might have entred, they could never know whether ſhe were a Treſpaſſor, or in whom the Freehold was rightfully veſted. But in Caſe of Copyhold Lands, as there is no ſuch Inconveniency, ſo the Nature of the Conveyance will not admit of ſuch Expoſition; for a Surrender is but a giving or yielding up that Eſtate one hath from another; and it is in the Nature of Things impoſſible to ſurrender more than one hath. * Cites Cro. E. 717. [per Cur. Mich. 41 and 42. Eliz. in the Caſe of Eriſh v. Reeves. ——— Poph. 38. 39. S C. adjudged accordingly.

For the Fee-simple of the Copyhold being limited to the Use of his Will, remained in the Copyholder, and not in the Lord. 4 Rep, 23. a. pl. 6. S. C. adjudged.

4. Surrender by Copyholder to the Use of himself for Life, then of his Son for Life, then *the Remainder to the Use of his last Will.* His Son dies. The Copyholder may again *surrender the Estate in Fee* if he will, and it will pass by such Surrender; Per Walmsley and Anderson J. sed adjornatur. Cro. E. 441. pl. 4. Mich. 37 and 38 Eliz. C. B. Fitch v. Hockley.

Mo. 465 pl. 658. Tiping v. Burning. S. C. adjudg'd, because in this Case the Ld. is not to have a new Fine on the Death of his Tenant for Life, but where the Lord is to have a Fine there must be a new Admittance.——Goldsb. 95. pl. 9. Kipping's Case S. C. argued.——Cro. J. 31. Auncelm v. Auncelm, for the Admittance of Tenant for Life was the Admittance of him in Remainder, and both makes but one Estate.

5. *Tenant for Life, Remainder in Fee*; Tenant for Life was admitted; The *Remainder-man* surrendered to J. S. in Fee, living the Tenant for Life, and held good, tho' not actually admitted. Cro. E. 504. pl. 29. Mich. 38 and 39 Eliz. B. R. Gyppin, als. Keppin v. Bunney.

S. C. cited Gilb. Treat. of Ten. 249. cites. S. C. that it was a Disseisin, and so it seems that the surrender was void.

6. A *Copyholder in Fee* 15 Feb. *made a Lease for Years by Licence, which Lease was to commence at Mich following. The Lessee entered*, and was possess'd *before the May following*, and afterwards, viz. 8 *May, the Copyholder surrender'd, the Reversion to divers Uses.* Resolved, that the Entry was a Disseisin, and so the Grant of the Reversion not good. Litt. Rep. 17, 18. Hill. 2 Car. C. B. Selby v. Berke.

So of a Surrender by *Remainderman for Life*, during his Ouster of Copyholder for Life; for by his Entry he is a Disseisor, and has no customary Estate in him whereof to make a Surrender. Mod. 199. pl. 31 Pasch. 27. Car. 2. C. B. Bird v. Kirk.—Cart 327. S. C. but no Judgment as to this Point.——If Tenant by Copy in Possession be disseised the *Reversion also is turned to a Right*, and then a Surrender is not good. 2. Jo. 154. Pasch. 33 Car. 2. B. R. in Case of Pitt v. Moor.

7. A Surrender by a Copyholder, who is ousted of the Possession, *during the Ouster* passes nothing; yet no Disseisin could be because the Freehold was in the King, who cannot be disseised, and if the Surrenderor enters afterwards, his Estate is regained. Clayt. 1. Aug. 7. Nelson v. Rennington.

Cart. 238. Bird v. Kirby. S. C.

8. In Ejectments the Lessor of the Plaintiff claimed under a Surrender made by W. Kirby, who *had an Estate in Land after the Death of his Father*, but entered during his Life, and thereby became a *Disseisor*, and this Estate being now turned into a Right, he made a Surrender to the Lessor of the Plaintiff, which being found by special Verdict; it was adjudged the Surrender was void; 'twas pretended at the Trial, that the Father, who was Tenant for Life, had suffered a Common Recovery in the Lord's Court, and so his Estate was forfeited, for which the Son may enter, and then his Surrender is good; But per Cur. without a particular Custom for that Purpose the suffering a Recovery is no Forfeiture; but if 'twas, then the Ld. is to enter, and none else can, and so Judgment was given for the Defendant. 2. Mod. 32. Pasch. 22 Car. 2. C. B. Kren v. Kirby.

9. A Copyhold is granted in *Reversion after 2 Lives*, Habend' post Mortem, sursum-redditionem &c. of the Tenants for Life; The *Tenants for Life* sell their Estate to A. and *surreuder to the Ld. to the end that he may admit A. the Vendee*; the Copyholder in *Reversion enters and brings an Ejectment, and recovers at Law*; A. brings his Bill, and has Relief, because the Surrender being only to admit A. the Purchasor, it was against Conscience that the Reversioner should enter. 2. Freem. Rep. 118. pl. 134. Mich. 1691. Anon.

(Q. a) Surrender. Good in reſpect of the Manner of the Surrender.

1. IF the *Ld. makes a Leaſe for Life to the Copyholder by Parol*, this *determines the Copyhold, if Livery be made, but otherwiſe if it is by Deed only*; per Hyde and Jones. But by Jones, if it be a Leaſe for Life, the Copyhold is gone without Livery upon it; Quod non fuit negatum. Lat. 213. Mich. 3 Car. Anon. Gilb. Treat. of Ten. 283. cites S. C. for if Livery be not made only an Eſtate at Will

Eſtate at Will paſſes, and an Eſtate at Will cannot merge an Eſtate at Will

2. *Covenant to make a Surrender* of Copyhold Lands to A. and his Heirs is not *performed* by a Surrender *into the Hands of 2 Tenants*, but it muſt be an effectual Surrender, and 'tis not ſo till 'tis preſented in Court. Sty. 256. Paſch. 1651. Shann v. Shann. and Ibid. 280. Trin. 1657. B. R. Shan v. Bilby. Contra in the Caſe of Beany v. Turner in C. B. but upon Error in B. R.

Twiſden J. held it no Performance; but Keeling Ch. J. held that it was, but Judgment was affirmed on another Point. Lev. 293. Trin. 22. Car. 2. ——— 1 Mod. 62. Turner v. Beany, S. C. and Judgment affirm'd Niſi &c.— Ibid. cites Hill. 21 Car. Treburn v. Purchas adjudged, that where the Agreement was for a Surrender generally ſuch a particular Surrender is naught.

3. Special Verdict found that Surrender was made *by A. to the Uſe of B. and his Heirs, to the Uſe of ſuch Perſon as A. ſhould name by his laſt Will*, this by Twiſden is ill, in that no *Uſe* can be *on a Uſe*, altho' it being not executed by Statute; but the Verdict finding further, that *H. nominated by the laſt Will of A. had ſurrendred unto B.* the Court conceiv'd no Doubt in the Caſe. Judgment for the plaintiff Niſi. Keb. 627. pl. 107. Mich. 15 Car. 2. B. R. Leaper v. Booth.

4. Cuſtom, that where an Eſtate is granted by Copy for 3 Lives to A. B. and C. that the *firſt Life named may bar the Remainders*, this muſt be by a Surrender according to the Cuſtom; for a *Surrender by Implication* (as A's. joining in a Fine with the Lord to the Uſe of M. and N.) is not a Surrender ſufficient to bar the Remainders of B. and C. Adjudged in C. B. and affirmed in B. R. 2 Show. 130. pl. 109. Mich. 32 Car. 2. B. R. Zinzan v. Talmaſh. Where it is only the Eſtate of himſelf a ſmall Matter would do it, but here are the Intereſts of B. and C. concerned.

Ibid. 131 S. C.———Raym 402. S. C. adjudged and affirm'd in Error.———Jo. 142. S. C. adjudg'd and Judgment affirmed.———Poll. 561. to 572. S. C. argued by Pollexfen againſt the Judgment in C. B. but that Judgment was affirm'd.

(R. a) Surrender. Good. In reſpect of the Limitation. And where it is in Futuro. And to Perſons uncertain.

1. A Surrender of a Copyhold in Fee *may be for* 1000 *Years*, and it is very good *if the Lord will admit*, but if he refuſes there is no Remedy but in Equity, and Equity will not compel the Lord to admit on ſuch an unreaſonable Surrender, for the Executors ſhould pay no Fine for Admittance. Cumb. 445. Trin. 9 W. 3. B. R. Anon.

2. A.

Cro. E. 29. pl. 1. S. C. adjudg'd, that the Surrender is void; For when one is ſeiſed in Fee he cannot by any Matter in fact give away the Inheritance after his Death, and ſo leave a particular Eſtate in himſelf, but peradventure it may be done by Matter of Record.

2. A Copyholder in Poſſeſſion ſurrendered the Reverſion of his Copyhold *Poſt Mortem ſuam to an Uſe* &c. It was adjudged, that nothing paſſed thereby. 4 Le. 8. pl. 36. Trin. 29 Eliz. Clamp v. Clamp.

4 Le. 8. pl. 36. S. C. —— S. C. cited by Coke Ch. J. Roll Rep. 138. 254. —— S. C. cited per eundem. 2 Bulſt. 275. —— S. C. cited Saund. 151. Arg. —— S. C. cited Arg. Show. Parl. Caſes 205.

3. Replevin; *J. S. and M. his Wife Copyholders in Fee* of a Houſe, and 12 Acres of the Nature of Borough Engliſh; *J. S. died. M. ſurviveth, and takes Husband J. C. and by him hath Iſſue the Plaintiff and Defendant.* J. C. and M. his Wife *ſurrendred the Land by name of the Reverſion after the Death of J. C. and M. his Wife, to the Uſe of the Plaintiff and his Heirs.* M. died, and afterwards J. C. died. The Defendant, the younger Son, enters as Heir by the Cuſtom; It was the Opinion of the Court the Surrender was not good by the Husband and Wife, by the Name of a Reverſion after the Death of M. and J. C. for that J. C. had nothing in the Land, and it is abſurd that J. C. by a meer Grant ſhould have an Eſtate for Life who had nothing before, and Judgment was given for the Defendant. Cro. E. 29. pl. 1. Trin. 26 Eliz. B. R. Clampe v. Clampe.

Supplement to Co. Comp. Cop. 67. S. 1. cites S. C. but ſays Quære—— Gilb. Treat. of Ten. 256. cites S. C. but makes a Quære.

4. *A. a Copyholder ſurrendred to J. S. for Life*, and afterwards *to the right Heirs of A.* and then he made another Sur render of his Reverſion to the Uſe of W. R. in Fee, and died; J. S. and the right Heir of A. entred; and Coke a Counſel argued, that by the firſt Surrender nothing remain'd in him, but the Fee was reſerved to his right Heirs, and if he had not made the ſecond Surrender of the Reverſion, his right Heir would have been in by Purchaſe, and not by Deſcent, and the Common *Difference is*, where it is made to *the Uſe of the Surrenderor himſelf for Life, and afterwards to another in Tail*, Remainder *to the right Heirs of the Surrenderor for Life* &c. For *in the firſt Caſe his right Heir ſhall be in by Deſcent*, and *in the other by Purchaſe.* 1 Le. 101. Paſch. 30 Eliz. B. R. in Caſe of Allen v. Palmer.

Cro. E. 386. S. C. but no Judgment. —Gouldsb. 129. pl. 23. S. C. but S. P. does not appear.

5. Copyholder for Years or Life ſurrendred *to the Uſe of A. and his Heirs* &c. adjudged the Surrender good, and the Uſe void. Mo. 352. pl. 474. Hill. 36 Eliz. Portman v. Willis.

S. C. cited Gilb. Treat. of Ten. 246. and ſays it ſeems, that for the Reaſons there before given it cannot be compar'd to the Caſe of a Feoffment to Uſes. See Ibid. 245, 246.

6. A. ſurrendered to the Uſe of *B. in Fee in Condition to pay* 100 l. *to J. S.* and *on Failure*, then to the Uſe of *W. R. in Fee*; whether this be good, being a *Fee upon Fee*; The Court ſpake not much to it, but recommended the finding it ſpecially, yet Beaumond J. conceived it to be good enough, for it ſhall be as an Uſe limited on a Feoffment, and theſe Uſes ſhall ariſe out of the firſt Surrender. Cro. E. 361. pl. 22. Mich. 36 & 37 Eliz. C. B. Paulter v. Cornhill.

7. If I *ſurrender to the Uſe of him that ſhall be Heir to J. S. or* to the Uſe *of J. S's. next Child, or* to the Uſe *of J. S's. next Wife*, though at the Time of the Surrender J. S. had no Child or Wife, yet afterwards he has a Child, or takes a Wife, his Heir, his Child, or his Wife may come into the Court, and compel the Lord to admit according to the Surrender. Co. Comp. Cop. 50. S. 35.

8. So

8. So if I ſurrender *to the Uſe of him that ſhall come next in to Pauls after ſuch an Hour*; whoſe Fortune ſoever it is to come firſt, the Lord muſt admit him, and I ſhall never avoid it. Co. Comp. Cop. 50. S. 35.

9. The ſame Law is, if I ſurrender *to the Uſe of him that J. S. ſhall nominate, or that I myſelf ſhall nominate to the Lord at the next Meeting.* Co. Comp. Cop. 50. S. 35.

10. Eſtates of Copyholders ſhall be *directed according to the Rules of the Common Law*, and therefore a Surrender made to take Effect after the Death of Surrenderor is not good, as a Freehold cannot begin in Futuro or at a Day to come. Supplement to Co. Comp. Cop. 69. S. 3.

11. If a Copyholder *ſurrenders 2 Acres* of Land *into the Lord's Hands, the one to the Uſe of J. S. and the other to the Uſe of J. N. and does not name in certainty who ſhall have the one Acre, and who* ſhall have *the other*, the Limitation of this Uſe is void for this Uncertainty. Calth. Reading, 31.

12. Surrender by A. to have *after his Death in* the Uſe of *his Child* then *in Ventre ſa mere*, and *if the Child die before his full Age of 21 Years or Marriage, then I ſurrender the ſaid Lands to the Uſe of my Couſin J. S. his Heirs and Aſſigns*, this Surrender to J. S. is merely void, for he cannot make ſuch a conditional Surrender to operate in Futuro, and ſo the Infant being born, and dying afterwards, the Defendant claiming from the Heir at Common Law to the Infant hath good Title. Cro. J. 376. pl. 2. Mich. 13 Jac. B. R. Simpſom v. Southern.

1 Roll Rep. 109. 137. 253. S. C. and the Court inclined that if the Surrender had been to the Uſe of his Will, and by the Will the above Eſtates had been limited, they ſhould be good.—— A. was jacens in Extremis, and ſurrendered. Godb. 264. pl. 364. Simſon's Caſe, S. C. reſolved. And that it cannot be good, becauſe it was to commence upon a *Condition precedent*, which was never perform'd; And therefore the Surrender into the Hands of the Lord was void; For the Lord takes only as an Inſtrument to convey the Lands to another.——2 Bulſt. 272. &c. S. C. adjudged.——S. C. cited Mar. 178. pl. 236.——Supplement to Co. Comp. Cop. 67. S. 1. cites S. C.——Supplement to Co. Comp. Cop. 81. S. 15. cites S. C. and that the Surrender into the Hands of the Lord is void, becauſe he takes it only as an Inſtrument to convey it over.——Gilb Treat. of Ten. 244, 245. cites S, C. and ſays it ſeems not grounded upon ſo good Reaſon as the Reſolution is in Cro. 9. For Surrenders are not to be conſtru'd ſo favourable as Wills, (tho' Coke ſays they ſhould be taken according to the Intent of the Surrenderor) neither is there the ſame Reaſon; for a Man may as well order a Surrender in his Life-time, according to the Rules of Law, as he may any Deed to paſs away a Freehold Eſtate, ſo that the Intention of the Party hath not ſo ſtrong an Operation in a Surrender as in a Will, and therefore that Reaſon will not ſupport a Fee upon a Fee in that Caſe, as it doth in a Will.—— Gilb. Treat. of Ten. 247. ſays, that Coke in his Copyholder ſays, that a Man may ſurrender Copyholds immediately to the Uſe of an Infant in Ventre ſa mere, for that a *Surrender is a Thing executory, and nothing veſts before Admittance; and therefore if there be a Perſon to take at the Time of the Admittance it is ſufficient*, which ſeems to be reaſonable, and to carry no Inconveniency with it; for it is not like a Grant at Common Law; for there if there be no body to take, the Grant is void, becauſe the Eſtate muſt be ſomewhere, and the Grant puts it out of the Grantor; but in Caſe of a Surrender there is no Inconveniency at all, for the Surrenderee hath nothing till Admittance, but the Eſtate is in the Surrenderor. Bnt then it ſeems, that if the Surrenderee be not in Eſſe before the Admittance that the Surrender will be void, for it ſeems to be implied by Lord Coke; for he ſays, that if at the Time of the Admittance the Grantee be in Rerum Natura, that will ſerve, which implies, that the Admittance is to be made after the uſual Manner, *not that the Admittance time ſhall be put off till there be ſuch a Perſon*, for then it would have been to no Purpoſe to have ſaid, that if there be ſuch a Perſon to take at the Time of the Admittance &c. for there is no Queſtion but that it will ſerve, if the Admittance muſt be ſtaved off till there be ſuch a Perſon, and no Queſtion but the Grantee will be in Rerum Natura, if the Admittance be to be put off, and ſo he need not have made a Queſtion, If he be, &c. and if he never come in Eſſe, then the Admittance-time will be eternally put off, the old Surrender ſtand good, and no body be able to diſpoſe of the Copyhold Eſtate.——Tho' at the Time of the Surrender the Grantee is not in Eſſe, or not capable of a Surrender, yet if he be in Eſſe, and capable at the Time of the Admittance, that is ſufficient. Co. Comp. Cop. 50. S. 35.

13. If I ſurrender *to the Uſe of B. after my Deceaſe* it is not good; Per Warburton and Daniel. Brownl. 41. Trin. 6. Jac. in Caſe of Dunnal v. Giles. Noy 152. Hill. 5 Jac. C. B. Allen v. Naſh, that 'tis good, tho' one cannot preſerve the ſame Eſtate to himſelf; for *the Eſtate is in the Lord, and the Surrenderor ſhall take the Profits during his Life*, and after the Lord muſt admit B. according to the Directions of the Surrender.——Brownl. 127. S. C. adjudged that (to the Uſe of the 2d Son Life) after

the Death of the Tenant and his Heirs is not good in a Surrender; For tho' it be good in a Will, yet Implication in a Surrender is not good, and in Copyhold Caſes a Surrender to the Uſe &c. is no Uſe, but an Explanation how the Land ſhall go —— Clayt. pl. 36. Aug. 1633. before Damport Ch. B. Holſworth's Caſe it was held, that ſuch Surrender was *good by reaſon of the Cuſtom* of the Manor, (which was Wakefield) but that *otherwiſe* it is *by the Common Law*,

Ibid. cites it as adjudg'd 23 Eliz. B. R. in Clark's Caſe.

14. A Surrender cannot be *made to commence at a Day to come*, any more than a Livery; reſolved. Godb. 265. pl. 364. Mich. 13 Jac. B. R. in Simpſon's Caſe.

S. P. For where the Limitation of the Uſe is void the Surrender is void. Godb. 165. pl 364. Mich. 13. Jac. B. R. in Simpſon's Caſe.

15. If a Copyholder in Fee doth ſurrender his Copyhold Lands into the Lands of the Lord, *to the Uſe of himſelf and his Heirs*; reſolved, that in that Caſe, becauſe the Limitation of the Uſe to him who had it before was void, the Surrender thereof to the Lord himſelf was alſo void. Supplement to Co. Comp. Cop. 67. S. 1. cites Hill. 17 Jac. B. R. Bambridge v. Whitton.

Cro. C. 366. pl. 4. S. C. ſays it was reſolv'd, that the Surrender was good, and the Clauſe being repugnant to the Premiſſes ſhall be rejected as idle and void, and ſhall not deſtroy the Premiſſes.——S. C. cited Arg' 5. Mod. 267.—— Gilb. Treat. of Ten. 244. cites S. C. and ſays that this Surrender was held to be void to M's. youngeſt Son, becauſe the Contingency did not happen in the Life of the Surrenderor, and a Man cannot ſurrender to take Effect after his Death; but ſays, it was not reſolv'd abſolutely that a Fee cannot be limited on a Fee.

16. A. ſurrenders to the Uſe of B. and C. his Sons, and the longeſt Liver of them, and for Default of Iſſue of the Body of B. then to the youngeſt Son of M. his Siſter, and ſays, *this ſurrender'd not to take Effect till after my Death*, theſe Words are void, and contrary to the Premiſſes; agreed per tot. Cur. Jo. 342. pl. 1. Trin. 10 Car. B. R. Seagood v. Hone.

Saund. 149. S. C. it was argued, that tho' the Eſtate limited to B. was void, yet the Limitation to J. S. was good, and adjudg'd that the *Eſtate of J. S. was good by way of preſent Eſtate, but not by way of Remainder.*——2 Keb. 341. pl. 12. S. C. adjudg'd.——Gilb. Treat. of Ten. 249. cites S. C.

17. A *Copyholder in Remainder after an Eſtate for Life in B. ſurrender'd to B. for Life*, (who was Copyholder for Life before) *the Remainder to J. S.* and held good by all the Juſtices, præter Twiſden. Sid. 360. pl. 3. Paſch. 20 Car. 2. B. R. Wade v. Bache.

If a Copyhold be ſurrendered to the Uſe of J. S. and his Heirs until he ſhall marry A. G. and after the ſaid Marriage then to the Uſe of them two in Tail ſpecial, if after they do marry, then is the Surrender to them in Tail, and till then to him in Fee. Calth. Reading. 31, 32.

18. Copyholder ſurrenders to the Lord, *to the Intent that the Lord ſhall admit A. whom he intended to marry, after Marriage; until Marriage to the Uſe of himſelf and his Heirs, and after Marriage to the Uſe of himſelf and A. in Tail*; Per tot. Cur. it is good enough to limit a Remainder upon a contingent Fee in Copyholds, as in Caſe of Mortgages of Copyholds, a Surrender in Futuro is good, for the Freehold remains in the Lord. Freem. Rep. 267, 268. pl. 293. Hill. 1679. C. B. Bently v. Delamore.

19. A *Copyholder in Remainder ſurrendred his Remainder to the Uſe of the Tenant for Life, and after his Death to the Uſe of himſelf and his Wife* &c. and though the Limitation for the Life of the Tenant for Life was void, and ſo by Conſequence by the Common Law the Remainder would have been void alſo, yet it was held, that in Caſe of Copyhold it *ſhould be taken as a mediate Settlement upon the Husband and Wife after the Death of the Copyholder for Life.* Lord Raym. Rep. 626. per Turton J. Hill. 12 W. 3. cites Cro. J. 434. 2 Roll Abr. 67. Brookes v. Brookes, and alſo 1 Saund. 151. Wade v. Bache.

[S. a.] What paſſes by the Words of a Surrender.

1. COpyholder ſurrendred *to the Uſe of B. for Monies paid, but limited no Eſtate*, and there was *a Cuſtom, that the Party to whom the Surrender was made ſhould have a Fee*, and adjudg'd a good Cuſtom. Arg. Roll Rep. 48. cites 6 Eliz. Thettenwell v. Bunney.

2. R. B. ſurrenders *to the Uſe of Margaret and Robert without limiting of any Eſtate*; Here they have but an Eſtate for Lives, for theſe Eſtates ſhall be directed according to the Rules of Law, unleſs there be a ſpecial Cuſtom within the Manor, as thoſe Words, *Sibi et ſuis*, or *Sibi et Aſſignatis* &c. may *by Cuſtom create an Eſtate of Inheritance.* 4 Rep. 29. a. pl. 18. Mich. 27 & 28 Eliz. Bunting v. Lepingwell.

S. C. cited 4 Rep. 28. b. in pl. 17. Trin 33 Eliz. as lately adjudged accordingly. —As well Eſtates as Deſcents of Copyholds to be guided according to the Rules of Common Law, as a neceſſary Conſequence upon the Cuſtomary Eſtates; ſo that if a Surrender be made *to the Uſe of one*, he has but an Eſtate for Life unleſs there be a Cuſtom to the contrary, for by Cuſtom a Uſe limited *to one & Aſſignatis ſuis* is good to paſs a Fee; A ſurrender *to one & tribus Aſſignatis ſuis*, adjudged but an Eſtate for Life, but in ſome Caſes Eſtates in Copyhold Lands are not guided according to the Rules of Common Law. Gilb. Treat. of Ten. 242, 243. cites 4 Rep. 29. b. Bunting v. Lepingwell.

3. A Copyholder ſurrendered *to the Uſe of a Stranger for ever*; it was made a Quære, if an Admittance by the Lord of the Surrenderee be good in Fee to him and his Heirs, it being by a bare Surrender only, but in Caſe of a Deviſe by ſuch Words it had been good. Godb. 137. pl. 162. 29 Eliz. B. R. Allen v. Patſhall.

4. If a Copyholder ſurrenders *to the Uſe of his right Heirs*, the *Eſtate will remain in the Lord till the Surrenderor dies*, for then, and notbefore, the right Heir will be known; Per Coke a Counſel. Arg. 1. Le. 101 pl. 133. Paſch. 30 Eliz. B. R. Allen v. Palmer.

Gilb. Treat. of Ten. 256, 257. cites S. C. and S. P. by Coke, but ſays Quære of this.

5. A. a Copyholder in Fee ſurrendered *to the Uſe of his laſt Will*, and deviſed to B. his Wife for Life, *Remainder to C. his Son in Tail*, *Remainder to D. his Son in Tail.* B. and C. are admitted. B. dies. C. dies without Iſſue. D. is admitted, and C. ſurrenders to the Uſe of E. the Defendant, and dies without Iſſue; Per Cur. the Heir may enter before Admittance, for Wray ſaid, when the Surrender is to the Uſe of his laſt Will, this at firſt is the whole Fee, but when he deviſed the Land for Life, or in Tail, and does not *meddle with the Reverſion*, by this the Reverſion never paſſed out of him to the Lord, but deſcends to his Heir, and he ſhall have it without any Admittance. Cro. E. 148. pl. 17. Mich. 31 & 32 Eliz. B. R. Bullen v. Grant.

Le. 174. pl. 244. S. C. held accordingly. —— Supplement to Co. Comp: Cop. 72. S. 7. cites S. C.

6. An *uncertain Surrender* of what Eſtate is to paſs, may by Cuſtom be *aſcertained* by the Lord, and he may grant to the Ceſty que Uſe in Fee. Cro. E. 392. pl. 15. Paſch. 37 Eliz. C. B. Brown v. Foſter.

Gilb. Treat. of Ten. 239. cites Cro. E. 392. S. C. for the Lord is Chancellor in his own Court, and ſo not unreaſonable for the Lord to determine what ſhall paſs.

7. A. ſurrendred *to the Uſe of B.* but did *not ſay what Eſtate* he ſhould have, but there was a *Cuſtom that* in ſuch Caſe *the Lord upon ſuch Surrender might admit him in Fee*, and adjudg'd a good Cuſtom. Arg. Roll Rep. 48. pl. 17. cites 37 & 38 Eliz. Brown v. Foſter.

Cro. E. 392. pl. 15. S. C. held accordingly per tot. Cur. and the Intereſt of the Land being betwixt the Lord and the Copyholder, it is not unreaſonable that upon ſuch an Uncertainty the Lord may aſcertain it. —— Supplement to Co Comp. Cop. 85. S. 19. cites S C. and takes

takes Notice that it was objected that the Cuſtom was unreaſonable, becauſe it was to charge the Land with a greater Eſtate than the Copyholder gave; to which it was anſwer'd, that the Cuſtom was good, becauſe the *Lord is Chancellor in his own Court*, and might diſpoſe thereof, when the Tenant leaves it uncertain; But Lord Coke ſays Quære, for the Caſe was not reſolv'd.

8. A Copyholder ſurrender'd *to ſuch Uſes as the Lord ſhould appoint*; the *Lord limits the Uſe to J. S. for Life.* Reſolv'd that *the Fee ſhall reſult to the firſt Copyholder*, and that he by his Will may diſpoſe of it. Litt. Rep. 26. Arg. cites Paſch. 35 Eliz. C. B. Wrot's Caſe.

S. P. cited as adjudg'd, that it is only an Eſtate for Life. Gilb. Treat. of Ten. 243.

9. A Surrender *to A. & tribus Aſſignatis ſuis* gives nothing in Intereſt, or otherwiſe by Courſe of Law before Admittance, and *by the Death of A. the Copyhold is determin'd.* Yelv. 16. Mich. 44 & 45 Eliz. B. R. in a Nota at the End of the Caſe of Arnold v. George.

——Co. Comp. Cop. 59. S. 49. S. P.

4 Rep. 29. a. b. pl. 18. Mich. 27 & 28 Eliz. the 2d Reſolution in Caſe of Bunting v. Lepingwell,

10. If the *Limitation of the Uſe be general*, then the Ceſty que Uſe takes but an Eſtate for Life, and therefore Littleton expreſſes upon the Declaration of the Uſe the Limitation of Eſtate, viz. in Fee-ſimple, Fee-tail &c. Co. Litt. 56. b.

unleſs there be a particular Cuſtom to the contrary within the Manor, As thoſe Words *Sibi & ſuis*, or *ſibi & Aſſignatis* &c. may by Cuſtom make an Eſtate of Inheritance; and it was obſerved, that Eſtates in thoſe Caſes limited upon Surrenders are always annex'd to the Eſtates of him to whom the Surrender is made, and that the Surrender to the Lord is always general without limiting any Eſtate. ——Gilb. Treat. of Ten. 206. cites S. C. and S. P. for a Surrender of the Eſtate gives up all the Copyholder hath to the Lord. Put the Caſe then, that the Surrender was made to Lord for Life, to the Uſe of another for Life, what Eſtate would the Lord then have? what could he make over? or Quære, whether the words (for Life) would be of any Significancy, tho' he that is admitted be in by the Surrenderor. Yet may a Man Surrender to the Uſe of his Wife, for ſhe takes the Eſtate from the Lord, as an Inſtrument to convey the Eſtate to her, and ſo it comes not within the Reaſon of other Caſes, that they being but one Perſon cannot contract; for he gives the Eſtate to the Lord, and he admits the Feme to it.

11. The *Lord cannot grant a larger Eſtate than is expreſſed in the Limitation of the Uſe*; *As* if *two Jointenats* be *in Fee, and one out of Court*, according to the Cuſtom, *ſurrenders* his Part *to the Uſe of his laſt Will, and deviſes his Part to a Stranger in Fee, and dies*; at the next Court the Surrender is preſented; by the Surrender and Preſentment the Jointure was ſevered, and the Deviſee ought to be admitted *to a Moiety*, for now *by Relation* the State of the Land was bound by the Surrender. Co. Litt. 59. b.

12. If *I ſurrender* a Copyhold *to a Man and his Heirs*, and *he reciting this Eſtate, re-ſurrenders in the ſame Manner to me that I ſurrendered to him*, not making any Mention of my Heir; yet this *Recital* ſeems ſufficient to paſs a good Fee-ſimple. Co. Comp. Cop. 58. S. 49.

13. If I *ſurrender* to you *as large an Eſtate as J. S. has in his Manor of D. and he has a Fee-ſimple in his Manor*, it is ſomewhat probable that an Eſtate in Fee-ſimple ſhould paſs, by reaſon of his *Relation*, without the Words Heirs. Co. Comp. Cop. 58. S. 49.

If a Copyhold be *granted to a Man and to his Heirs Males, or Heirs-Females*;

14. If a Copyhold be ſurrendered *to a Man & ſemini ſuo Hæreditabili de Corpore*, or to a Man & *Hæredibus ex ipſo Procreatis*, or to a Man *in Frank-marriage* with his Wife, in theſe Grants an Eſtate Tail paſſes in the firſt without the Word Heirs, in the ſecond without the Word Body, in the third without either. Co. Comp. Cop. 59. S. 49.

if to a Man & *Sanguini ſuo Hæreditabili*; if *to a Dean and Chapter*, or to a *Mayor or Commonalty, without any expreſs Eſtate*, or without a Limitation of ſome inferior Eſtate, in all theſe Grants a perfect Eſtate in Fee paſſes. Co. Comp. Cop. 58. S. 49.

Gilb. Treat. of Ten. 258. cites S. C.

15. A. ſeiſed in Fee ſurrendered to the Uſe of his laſt Will, and *by his Will deviſed* to his Wife his Copyhold Lands, and *if ſhe hath no Iſſue*, that

that then *ſhe ſhall chuſe two Attornies, and they to make a Sale of my Lands to her beſt Advantage* &c. She had Eſtate for Life, and not having any Iſſue, has not any Intereſt to diſpoſe, but has Authority by his Will to nominate two to ſell, and they may make Sale, and the Vendee ſhall be in by the firſt Will, and there *needs not any new Surrender.* Cro. J. 199. pl. 30. Mich. 5 Jac. B. R. Beal. v. Shepherd.

16. If a Copyholder ſurrenders for Life, there *paſſes from him no more than ſuffices to make the Eſtate, and* the reſt remains to him. Brownl. 181. Trin. 9 Jac. Bicknall v. Tucker.

9 Rep. 107. a. S. P. by the Ch. J. in Margaret Podger's Caſe S. C.——2 Brownl. 157. S.C. and S. P. by Coke Ch. J.

17. Surrender of Copyhold is *not to be reſembled to ſurrender at Common Law*; for if Copyholder in Fee ſurrenders to the Uſe of another for Life, nothing more paſſes from him than will ſerve the Eſtate limited to the Uſe, and he that makes the Surrender ſhan't pay a Fine for Re-admittance to the Reverſion, for this continues always in him. 9. Rep. 107. in Marg. Podger's Caſe.

18. If a Copyholder ſurrenders his Copyhold of Inheritance into the Hands of the Lord, *to the Uſe of J. S. paying of a* 100 l. *to his Executors within ſuch a Time after his Death*, he to whoſe Uſe this Surrender is made takes by Force of this preſently; Per Doderidge J. 2 Bulſt. 275. Mich. 12 Jac.

Gilb. Treat. of Ten. 260, 261. cites S. C. and ſays. that if it be not a preſent Surrender it will be of no Effect.

19. A. ſeiſed of Copyhold Land in Fee *by Licence demiſed* the ſame by Indenture to S. the Plaintiff for 20 Years. A. ſurrender'd *the Reverſion of one Moiety* to B. to which he was admitted, and then ſurrender'd *the Reverſion of the other Moicty to* C. who was alſo admitted. Reſolv'd, that the Surrender by the Name of a Reverſion was good in this Caſe, though the Leaſe was not made by Surrender, (which had been directly derived, and that according to the Cuſtom out of the cuſtomary Eſtate) but by Indenture; for ſtill it is the Leaſe of the Copyholder, and not of the Lord; Reſolv'd. Hob. 177. pl. 203. Hill. 14 Jac. Swinnerton v. Miller.

Brownl. 178. S. C. and S. P. held accordingly.—— Gilb. Treat. of Ten. 162. cites S. C. ſays, that tho' ſuch Intereſt may paſs by Name of Reverſion (for any other Name to give it will be hard to find) yet perhaps he hath not in ſtrictneſs ſuch an Eſtate in him. However that be, it ſeems the Particular Tenant holds of the Lord; therefore if the Tenant in Fee of a Copyhold ſurrenders to one for Years, it ſeems to me that the Tenant for Years ſhall hold of the Lord, for by Admittance the Lord takes him for his Tenant; but if the Leaſe be made by Indenture, there it ſeems he holds of his Leſſor; for he is not admitted Tenant to the Lord.

20. A Feme Copyholder in Fee came to Court, and *offered to ſurrender to J. S. and his Heirs, but ſhe deſired to retein an Eſtate to herſelf for Life*, and the *Steward entered, that ſhe ſurrendered the Reverſion* of her Copyhold *to J. S. after her Death*, and it was adjudged an ill Grant, becauſe there was not any Reverſion, cited per Harvey J. Hill. 2 Car. C. B. in Caſe of Selby v. Becke. Litt. Rep. 18. as one Drewell's Caſe.

21. Surrender *with the Appurtenances* will paſs *Land*. Surrender of a *Meſſuage and three Acres* will paſs more Acres if divers Copies ſucceſſively have been ſo; Per Harvey. Het. 2. Paſch. 3 Car. C. B. Blackhall v. Thursby.

There was a Copyhold *Meſſuage called Symonds to which divers Lands appertaining*, the Tenant ſurrendered *the ſaid Meſſuage called Symonds, with the Appurtenances*, and all his Right therein; per tot Cur. nothing ſhall paſs but the Houſe, with the Orchards, Yards, and Curtelage, and Garden, by theſe Words (Cum Pertinentiis) Cro. J. 526. pl. 2. Paſch. 17 Jac. B. R. Smithſon v. Cage.——Gilb. Treat. of Ten. 294, 295 cites S. C.

Lev. 135. S. C. no Judgment was given in the principal Point, but the Cauſe was agreed to be adjourn'd into the Exchequer Chamber, but the Reporter ſuppoſes it was agreed between the Parties, for he heard no more of it afterwards. —— Sid. 153 pl. 2. S C. reports that the Court held it clear, that Deviſe to an Infant when he ſhall be born, or to a Daughter when ſhe ſhall be married, are good, and the Land ſhall deſcend to the Heir in the mean time ——— Keb. 752. pl. 47 S. C. adjornatur. —— Ibid 800. pl. 67. S. C. that the Deviſe was good, and Judgment for the Plaintiff Niſi —— Ibid. 851. pl. 53. S. C. ſays, that all doubted that the Deviſe was void, and Deviſe to an Infant en Ventre ſa mere has been a wavering Point in all Ages; Adjornatur.

22. A and his Wife Tenants for Life of a Copyhold, Remainder to A. in Fee ſurrendered thus, viz. *My Lands in H. which were my Wife's, and now her's for Life, I give to the Heirs of the Body of my ſaid Wife, if that he or they live to 14 Years of Age, and for want of ſuch Heirs* then *to R. S. and his Heirs.* The Husband died without Iſſue, the Wife married again, and had Iſſue which lived to 14 Years of Age. The Wife died. Quære, if the Words of the Will will paſs any Eſtate to the Iſſue? Court divided. Raym. 162. Mich. 19 Car. 2. B. R. Snow v. Cutler.

See (U.)

(T. a) Where Tenant ſhall be bound by a voluntary Surrender made out of Court.

S. C. cited Gilb. Treat. of Ten. 270. and obſerves, that by Lord Coke's ſaying a Surrender out of Court it ſeems, that if it were made in Court it would not be revocable, for then he ſhew'd a more ſettled Deſign, and by his ſaying before Preſentment, it ſeems that if it was preſented it is not revocable; for then the Land is bound. — If a Copyholder ſurrender *in Extremis to the Uſe of himſelf for Life* &c. if he grows well again, the Surrender *ſhall ſtand*, becauſe he has reſerved an Eſtate to himſelf; per Wray Ch. J. Le. 100. pl. 128. Paſch. 30 Eliz. B. R. in Caſe of Romney v. Eve. ——— Gilb. Treat of Ten. 270, 271. cites S. C. and ſays that this ſeems to warrant the a foreſaid Opinion of Coke.

1. IF a Copyholder languiſhing *in Extremity ſurrendreth out of Court to the Uſe of his Couſin, in Conſideration of Conſanguinity*, or to the Uſe *of his Son, in Conſideration of natural Love and Affection*, and recovereth his Health before Preſentment, this Surrender is peradventure revocable or countermandable. Co. Comp. Cop. 51. S. 39. Anon.

2. *But if* it be granted *upon valuable Conſideration*, as *for the Diſcharge of Debts*, or for *a Sum of Money paid*, though it be made out of Court, yet it is as binding as any Surrender whatſoever made in Court. Co. Comp. Cop. 51. S. 39. Anon.

This in Roll is Letter (I) in Fol. 501.

[U. a] *What* ſhall be ſaid *a good Preſentment* of a Surrender, and *at what Time.*

See (K) pl. 1. 1. S C. The Preſentment in all Points material muſt be according to the Tenor of the Surrender. Co. Comp Cop. 51, 52 S. 40. —— Gilb. Treat. of Ten. 263. ſays, that tho' the Preſentment be made wrong, yet if Admittance be made according to the Surrender, the Admittance is good.

1. CO. 4. **Rite and Quinton** 25. **The** Cuſtom **of the Manor** was, that a Surrender out of Court ſhould be preſented in Court; A Copyholder ſurrenders **accordingly** upon Condition, **and** this is preſented abſolutely, **and reſolved, that the Preſentment is void.**

2. Co.

2. Co. 4. Bunting 29. b. Copyholder in Fee ſurrenders out of Court, and dies before it is preſented in Court, **yet the Surrender being** preſented after his Death, according to the Cuſtom, **is good, as is reſolved; but if it had not been done according to the Cuſtom, it had not been good; and if the** Tenants, **by whoſe Hands the Surrender was made,** die, **yet if this upon** good Proof **is preſented, it is well enough. Co. Lit. 62.**

Mich. 27 & 28 Eliz. the 5th Reſolution, in the Caſe of Bunting v. Lepingwell—— S. C. and S. P. cited 3 Bulſt. 215.

—S. C. cited Bridgman 51.—If it be preſented by any other Copyholder at the next Court it is well enough, the Copyholders who took the ſame being dead; Held per tot. Cur. and cited Bunting's Caſe. Cro. J. 403. pl. 1. Trin. 14 Jac. B. R. in Caſe of Froſel v. Welſh.——— Co. Comp. Cop. 51. S. 40. ſays the Preſentment muſt be made by the ſame Perſons that took the Surrender. ——Gilb. Treat. of Ten. 263. cites Lex Cuſt. 137 that a Surrender muſt be preſented by the ſame Perſons that took it; ſo ſays Coke, but that this is not literally true, will appear from what he ſays in another Place, that if he that took the Surrender die, yet if Preſentment be made of it, it is ſufficient; and it is ſaid in Lex Cuſt. to have been held by Wadham Windham, that if a Surrender be made to one Tenant, and preſented to have been made to another, yet that is nothing to vitiate the Surrender; if the Surrender be preſented by any Body, and Admittance thereupon made, it ſeems to be well enough, for it is known that there was a Surrender; and if the Preſentment ſhould be void, yet the Admittance is good enough without it.

3. **If there be** two Jointenants in Fee **of a Copyhold, and** one ſurrenders his Part out of Court **into the Hands of the Lord,** to the Uſe of his laſt Will, and **after** deviſes it to another in Fee, **and dies, and after, at the next Court, this is preſented, the Deviſee ſhall have it; for now by Relation the Jointure was ſevered, and the Eſtate of the Land bound by the Surrender. Mich. 2. 3. Ph. M. B. Conſtable's Caſe, cited, Co. Lit. 59. b.**

4. Within the Manor of P. there was a *Cuſtom, that if any Tenant of the Manor aliens Lands holden of the Manor by Writing or Feoffment, or deviſeth it by his Will, or ſurrenders it into the Lord's Hands to the Uſe of any other, that ſuch Alienation, Feoffment, Deviſe, or Surrender* uſed, *and ought to be preſented at ſome Court of the Manor there holden within a Year after* ſuch Alienation, Feoffment &c. It was objected it was no good Cuſtom; all the Court except Anderſon held it to be a good Cuſtom, and allowable, and agreeable to Law; for it is good Reaſon the Lord ſhould know his Tenant, for otherwiſe it may be ſo ſecret that the Lord or other may not know who is the Tenant. Cro. E. 668. pl. 25. Paſch. 41 Eliz. C. B. Parman v. Bowyer.

5 Rep. 88. Perryman's Caſe S. C. and adjudg'd a reaſonable Cuſtom —— 2 And. 125. pl. 71. Pereman v. Bower S.C.

5. If the Surrender be not preſented at the next Court (after the Death of him that made it) according to the Cuſtom, then the Surrender becomes void, and ſo it was clearly holden. Paſch. 14 Eliz. in the Common Pleas. Co. Litt. 62. a.

4 Rep. 29. b. pl. 18. Mich. 27 & 28 Eliz. the 5th Reſolution in Caſe of Bunting v. Lepingwell ——Gilb. Treat. of Ten. 207. S. P.——Co. Comp. Cop. 51. S. 40. S. P. and that ſo it muſt be by the General Cuſtom of the Realm; but by ſpecial Cuſtom in ſome Places it will ſerve at the 2d or 3d Court.—Gilb. Treat. of Ten. 264 S. P. and ſays the Reaſon of this ſeems to be to prevent Diſputes; for if an old Surrender might be trumped up at any Time, it would defeat any After-Charges made by him that ſurrendered, which Charges would appear to be good enough, ſince he is Tertenant, and continues Poſſeſſion, and the Surrender could not be known. But now let but the Purchaſor ſtay a Court or two, and then he may be ſure to know whether there is any Incumbrance; for if the Surrender is preſented, then it appears, and he need not meddle; if it be not preſented, he knows it is void, and ſo may proceed.

6. By the Surrender *out of Court* the Copyhold Eſtate paſſes to the Lord under a *ſecret Condition that it be preſented at the next Court*, according to the Cuſtom of the Manor, and therefore if after ſuch a Surrender, and before the next Court, he that made the Surrender dies, yet the Surrender ſtands good, and if it be preſented at the next Court, Ceſty que Uſe ſhall be admitted thereunto. Co. Litt. 62. a

This in Roll is Letter (K) in fol. 501.

[W. a] What *Entry of the Surrender and Preſentment* ſhall be *good*. [Variance.]

But if the Preſentment of the Surrender at the next Court by the Copyhold Tenant (who took the ſame out of Court according to the Cuſtom) omits the Condition the Preſentment is void. Reſolv'd 4. Rep. 25. a pl. 11. Paſch. 31 Eliz. B. R. the S.C.——— Supplement to Co. Comp. Cop. 80. S. 15. cites S. C.———Gilb. Treat. of Ten. 179. cites S. C. ——Co. Comp. Cop. 52. S. 40. S. P. ——— Gilb. Treat. of Ten. 318. cites S. C. that Ld. Coke ſays, that *Preſentments* of Surrenders *ought in all material Points to enſue and agree with the Surrenders themſelves*, elſe the Surrender, Preſentment, and Admittance thereupon will be void, which ſeems reaſonable; for if the Preſentment in Matter differs from the Surrender, the Lord hath no ſufficient Notice of the Surrender, and then the Admittance upon it muſt in Reaſon be bad, and not help out the Preſentment; for if the Lord knew the true Surrender, perhaps he would never conſent to ſuch a Surrender; and the true Surrender ought to be known; that the Lord might know his Tenant, and from whom to take his Services. The Admittance cannot help out, for that was grounded upon the Preſentment; but if the Lord had Notice of the true Surrender, tho' the Preſentment did differ, yet it ſeems reaſonable the Admittance ſhould enure; and when a Man is admitted, he is in by the Surrender; ſed quære, Where it is ſaid that if the Preſentment differs in Points material from the Surrender, that there the Admittance, Preſentment, and Surrender are all void; It ſeems this muſt be underſtood, if the Time for preſenting the Surrender be paſt, for if there ſhould be a Preſentment and Admittance made contrary to the Surrender, ſure this will not make the Surrender void before the utmoſt Time allowed by Law for the Surrender's being preſented; for it is no Reaſon to ſay, that becauſe the Preſentment is void, that therefore the Surrender is void, for the Surrender depends not on the Preſentment, tho' it may be void, becauſe not preſented, but not becauſe ill preſented; So that if after ſuch ill Preſentment and Admittance there ſhould be good Preſentment and Admittance, it ſeems the Surrender, and all the other Acts will ſtand good.

1. **Co. 4. Kite and Quinton** 25. A Conditional Surrender is preſented, **and the** Steward in entring **thereof** omits the Condition, **yet it is held, That upon ſufficient Proof thereof, the Surrender ſhall not be avoided, but the** Roll ſhall be amended, **and the Roll ſhall not conclude the Party to give Evidence againſt it.**

For this Entry is not Matter of Record, but is but an Eſcroll,

2. *Miſentry of the Date of the Court* of the Manor ſhan't prejudice the Party. 1 Le. 289. pl. 395. Trin. 26 Eliz. B. R. Burgeſs v. Foſter.

and on Iſſue joined of the Time of the Surrender, or of the Court, it ſhan't be try'd by the Rolls, but by the Country. Ibid. ———4 Le. 215. pl. 348. S. C. in totidem Verbis. ——4 Rep. 215. pl. 348. S. C. in totidem Verbis.

An Entry in the *Steward's Book*, and a parol Proof by the *Foreman of Jury*, admitted as good *Evidence*,

3. Where a Surrender was made upon Condition, and the Steward in the Entry *omits the Condition*, yet upon ſufficient *Proof* of it the Surrender ſhan't be avoided, but the Roll ſhall be amended, for the Roll *ſhan't conclude* the Party either to plead or give in Evidence the Truth of the Matter. 4 Rep. 25. a. b. pl. 11. Paſch. 31 Eliz. B. R. Kite v. Queinton.

that a Feme Covert *ſurrendered* her whole Eſtate, though the Surrender on the *Roll differed*, and was only (as was alſo the Admiſſion) of a Moiety. 2 Vern. R. 587. Hill & Ux' v. Wiggot.

Supplement to Co. Comp. Cop. 71. S. 6. and 81. S 15 cites S. C.——Co. Comp. Cop. 52, 53. S 41. cites S. C. ———Roll Rep. 238. 317. 438. Lane v. Pannel.

4. Where the *Admittance differs from the Surrender* the Eſtate of the new Copyholder ſhall be guided by the Surrender, for after Admittance he is in by Force of the Surrender, as where the Surrender was abſolute and the Admittance is on a Condition. 4. Rep. 28. b. pl. 17. Trin. 33 Eliz. B. R. Weſtwick v. Wyer.

——*Covenant in a Settlement* to ſurrender Copyhold Lands to the Heir Males, but the *Surrender by a Miſtake was entered* on the Roll to the Uſe of the Heirs General, this Surrender was decreed to be *vacated*, and a new Surrender made according to the Settlement. Fin. R. 254. Brend v. Brend.

(X. a) What Effect the Surrender has, where there is no Preſentment.

1. IF Copyhold Lands are ſurrendered *into the Hands* of the Ld. of the Manor, and he in the Preſence of his Tenants, out of the *Court* grants the ſame to another, and the *Steward entereth the ſame into the Court Book, and maketh thereof a Copy* to the Grantee, and the Ld. dies before the next Court, this is no good Copy to hold the Land; *But* if the ſame Surrender and Grant be preſented at the next Court *in the Life of the Lord*, and the Grantee admitted Tenant, and a Copy made to him, this is a good Copy. Calth. Read. 46. 47.

2. If *I ſurrender* out of Court, *and die before Preſentment*, if *Preſentment* be *made after my Death*, according to the Cuſtom, this *is ſufficient*. 4 Rep. 29. b. Bunting v. Lepingwell S. P.

3. *So if he to whoſe Uſe the Surrender is made dies before the Preſentment*, yet upon Preſentment made after his Death, according to the Cuſtom, his Heir ſhall be admitted.

4. And ſo if I *ſurrender* out of the Court *to the Uſe of one for Life*, the *Surrenderor and the Leſſee for Life dies before Preſentment*, yet upon Preſentment made, he in the Remainder ſhall be admitted.

5. And ſo if I *ſurrender to 2 jointly, and one dies before Preſentment*, the other ſhall be admitted to the whole.

6. The ſame Law is, *if thoſe, into whoſe Hands the Surrender is made, die before the Preſentment*, upon ſufficient Proof in Court that ſuch a Surrender was made, the Lord ſhall be compelled to admit accordingly; and if the Steward, the Bailiff, or the Tenants, into whoſe Hands the Surrender is made, refuſe to preſent upon a Petition, or a Bill exhibited in the Lord's Court, the Party grieved ſhall find Remedy. But if the Ld. will not do him Right, he may both ſue the Ld. and him that took the Surrender in the Chancery, and ſhall there find Relief. Co. Comp. Cop. 52. S. 40. cites 4 Rep. 29. b.

7. Copyholder in Fee ſurrendred into the Hands of 2 Tenants according to the Cuſtom of the Manor, to the Uſe of another and his Heirs, to be preſented at the next Court; *no Court was held for* 30 *Years afterwards, within which Time the Surrenderor, Surrenderee*, and *the* 2 *Tenants all died*. The Heir of the Surrenderor entred, and made a Leaſe for Years according to the Cuſtom of the Manor. Adjudged that the Leaſe was good. Godb. 268. pl. 372. Mich. 14 Jac B. R. Anon. Cro. J. 403. pl. 1. Froſell v. Welch, S. P. and ſeems to be S. C. and the whole Court held that by the Surrender into the Hands of 2 Tenants, nothing paſt until it was preſented in Court, and that in the Interim the Intereſt remain'd to him who made the Surrender, which Intereſt deſcended to the Heir who is Leſſor to the Plaintiff, and that he well might enter and make the Leaſe (being but a Year) without the Ld's. Licence, or without ſhewing any ſpecial Cuſtom; And the Acceptance of the Rent by the Hands of Ceſtuy que Uſe gives not any Intereſt unto him, until this Surrender be preſented in Court; for the Cuſtom is ſtrict, which ought to be obſerved; But they held, that *it was not of Neceſſity that the Parties who took the Surrender ſhou'd preſent it*; and altho' they be dead, and the Party who made it is dead, yet (as the Cuſtom is found) *if it be preſented by any other Copyholder when the next Court is held, it is well enough*; and he may thereupon be well admitted.—Gilb. Treat. of Ten. 263. cites S. C.—Supplement to Co. Comp. Cop. 69. S. 3. cites S. C. and ſays it was reſolved, that the Leaſe for Years was well made, becauſe before ſuch Time that the Preſentment was made in Court of the Surrender, the Intereſt of the Copyholder did remain in the Surrenderor, and his Right deſcended unto and upon his Heirs and he might take and receive the Rents and Profits of the Lands; for that no Perſon can have a Copyhold, or a Copyhold Eſtate, but ſuch a Perſon who comes into the ſame by Cuſtom of the Manor, viz. by Admittance of the Ld. which in this Caſe Ceſty que Uſe did not do. — Bridgm. 49. S. C. adjudg'd.——3 Bulſt. 214. Roſewell v. Welſh. S. C. adjudg'd. ——Roll Rep. 415. pl. 3. S. C. adjudg'd.

8. A Surrender is *not effectual* till it is ſurrendered in Court; per Roll. Ch. J. Sty. 257. Paſch. 1651. in that of Shann v. Shann.

(Y. a) Want of Preſentment Relieved in Equity.

1. A Copyholder *on Marriage agreed to ſettle* on the Wife for Life, but did not; after he *ſurrendred by way of Mortgage* to A. for Money lent, and then ſurrendred to the Uſe of his Will, and then by Will deviſed to his Wife for Life, Remainder to his Daughter in Fee, and dies. A's Surrender was *not preſented at the next Court*, but the Wife got herſelf admitted. The Wife being in by Agreement precedent to the Plaintiff's Title, the Court would not impeach her Eſtate, but as to the Daughter, her's being purely a voluntary Eſtate, 'twas ordered, that unleſs ſhe would pay the Plaintiff his Money, he ſhould hold and enjoy the Premiſſes againſt her. Ch. Caſes 170. Trin. 22 Car. 2. Martin v. Seamore.

And come ſemble al Reporter, he became a *Truſtee for the Purchaſer*

2. Copyholder in Fee ſurrendred to the Uſe of Mortgagee in Fee, and became *Bankrupt before Preſentment*, and there never was any Preſentment made; per Cowper Chanc. tho' the Surrender was void in Law for want of a Preſentment, and that might be the *Laches of Mortgagee* in not procuring it, yet the *Surrender was a Lien*, and bound the Land in Equity, and an Aſſignee of the Commiſſioners of Bankruptcy ought not to be in a better Caſe than the Bankrupt, who was plainly bound in Equity by this defective Conveyance. 2 Salk. 449. pl. 2. Mich. 3 Ann. in Canc. Taylor v. Wheeler.

Ibid —— By *Act of Parliament* confirming the Cuſtom of the Manor, all Surrenders were to be void if not preſented within 12 Months after they were made, and in this Caſe more than 4 Years paſſed before 'twas preſented which was after the Copyholder's Death; on a Bill by the Mortgagee againſt the Aſſignees and the Heir, 'twas decreed by Ld. Cowper, that the Defendants pay the Plaintiff his Principal, Intereſt, and Coſts, or to be *foreclоſed* and, the Plaintiff to be admitted to hold and enjoy againſt Defendants. 2 Vern. 564. S. C. 11 Nov. 1706. ——S. C. cited Wms's. Rep. 280.——S. C. cited 2 Vern. 610. ——S. C. cited per Mr. Vernon. Ch. Prec. 524. ——S. C. cited Arg. G. Equ. R. 14.

(Z. a) What Effect a Releaſe, or other Deed, will have as to Copyholders.

Supplement to Co. Comp. Cop. 73. S. 8. cites S.C. ——Per Anderſon contra; But Snagg ſeemed to think it did. Cro. E. 21. pl 2. Trin. 25 Eliz. B. Anon.——Releaſe by a Copyholder to the Ld. is good; per Twiſden. Keb. 808. in pl. 77. —— Gilb. Treat. of Ten. 283. cites S. C.

1. RElease by Copyholder to one that *purchaſed the Fee of the Ld.* extinguiſhes the Copyhold. Le. 102. pl. 145. Paſch. 30 Eliz. B. R. Wakefield's Caſe.

Supplement to Co. Comp. Cop. 80. cites S. C. — Gilb. Treat. of Ten. 179, 180. cites S. C. —— Co. Litt. 59. 60. a. S. P. accordingly. ——S. P. Arg. 2 Browal. 175. ——Cro. J. 101. pl. 32. Whitton v. Williams S. P.

2. *If a Man is admitted* to a Copyhold, and is a Copyholder in Poſſeſſion, ſo that a Releaſe of the Cuſtomary Right may enure to him, and becauſe the Ld. is thereby at no Prejudice, for he has had his Fine upon the Admittance of the preſent Tenant, and he to whom the Releaſe is made is in by Title, viz. by the Admittance of the Ld. *the Releaſe enures by way of Extinguiſhment* of the Right of the Copyholder, and is a Bar to him, Reſolv'd 4 Rep. 25. b. pl. 11. Paſch. 31 Eliz. B. R. in Caſe of Kite v. Queinton.

3. *But if* Copyholder be *ouſted by one by Tort*, there his Releaſe by Deed to the Diſſeiſor or other Tort-feaſor does not transfer any Right, nor

nor bar him, firſt becauſe he has not any cuſtomary Eſtate whereupon the Releaſe of the cuſtomary Right may enure; And 2dly, It will be to the Prejudice of the Lord; for thereby he will loſe his Fine and Services, and ſo it is utterly void. Ibid.

4. *Copyhold Intereſt cannot be transferred by any other Aſſurance than by Copy of Court Roll*, according to the Cuſtom. Co. Comp. Cop. 50. S. 36.

5. If I will *exchange* a Copyhold with another, I cannot do it by an ordinary Exchange at the Common Law, but we muſt ſurrender to each other's Uſe, and the Lord admit us accordingly. Co. Comp. Cop. 50. S. 36. Gilb. Treat. of Ten. 293. cites S. C.

6. If I will *deviſe* a Copyhold, I cannot do it by Will at the Common Law, but I muſt ſurrender to the Uſe of my laſt Will and Teſtament, and in my Will I muſt declare my Intent. Co. Comp. Cop. 50. S. 36.

7. If I am *ouſted* by a Copyholder, *a Releaſe* made to him to him *is void*, becauſe it would be a Prejudice to the Lord; and beſides, there is no cuſtomary Right upon which the Releaſe may inure; *But a Releaſe inuring by the way of extinguiſhing, where no Prejudice accrueth to the Lord*, will ſerve to drown a Copyhold Right; and therefore if I *ſurrender out of Court upon Condition* to the Uſe of J. S. and the *Preſentment is made abſolute* in Court, *and the Admittance framed accordingly*, this Admittance and Preſentment differing from the Effect of the Surrender are both void; yet becauſe upon the Admittance the Lord is ſatisfied of his Fine, and ſo nothing at all prejudiced, and beſides, here is a cuſtomary Right upon which the Leaſe may be grounded; I may by a Releaſe at the Common Law ſufficiently confirm this void Eſtate. And ſo upon the ſame Reaſon, *if I am ouſted* of a Copyhold, *and the Lord admits him*, according to the Cuſtom, a Releaſe made by me at the Common Law will extinguiſh my Right; *But if make a Leaſe for Years* of a Copyhold, *I cannot by my Releaſe paſs my Reverſion*, becauſe this Releaſe *inureth by way of Inlargement* to transfer an Intereſt, *and not by way of Extinguiſhment* to drown a Right; but my Way is to ſurrender my Reverſion into the Hands of the Lord, and he to grant it over to the Leſſee. Co. Comp. Cop. 50. S. 36. Gilb. Treat. of Ten. 293. cites S. C. & S. P. and that no Eſtates can paſs by Leaſe and Releaſe, though the Leaſe be by Surrender; for a Releaſe cannot enlarge a Copyhold Eſtate.

8. A Copyholder *ſurrendered upon Condition*, and afterwards by Deed *releaſed the Condition*; Reſolv'd, that this is good, for a Right or Condition cannot properly be determined or given by Surrender, or otherwiſe than by Releaſe. Cro. J. 36. pl. 11. Trin. 2 Jac. B. R. Hall v. Shadbrook. Supplement to Co. Comp. Cop. 80. S. 15. cites S. C. —— 4 Rep. 25. b. in Caſe of Kite v. Queinton, S. P. —— Co. Litt. 59. a. S. P.

9. If there are *two Joint Copyholders*, and *one* of them *releaſes to the other*, this is good without any Surrender or Admittance of him to whom the Releaſe was made, becauſe the firſt Admittance was of them, and every of them, and the Ability to releaſe did ariſe from the firſt Admittance. Win. 3. Paſch. 19 Jac. Waſe v. Petty. Het. 150. Mich. 5 Car. C. B. Mortimer's Caſe, S. P. agreed accordingly, per Cur.

10. If a *Copyholder releaſes to the Lord*, it extinguiſhes the Copyhold though it be contrary to the Nature of a Releaſe to give a Poſſeſſion. Hutt. 65. Trin. 19 Jac. in Caſe of Blemer-Haſſet v. Humberſtone. Jo. 41, 42. pl. 2. Bleverhaſſet v. Homberſtone, S. C. & S. P. —— Win. 66, 67. Paſch. 21 Jac. C. B. Haſſet v. Hanſon, S. C.

11. If

If a *Copyholder comes to his Eſtate tortiouſly*, (it ſeems it muſt be *by Admittance*, elſe the Releaſe will not operate at all) *and commits a Forfeiture*, and *then he that hath Right releaſes to him*, this ſhall hinder the Lord's Entry, becauſe now he hath, as it were, another Eſtate of which he hath committed no Forfeiture; ſed quære. Gilb. Treat. of Ten. 233.

11. If a Man comes into a Copyhold tortiouſly, and is admitted by the Lord, and afterwards he makes a Leaſe for 3 Lives, which is a Forfeiture of his Eſtate, yet if he that has the pure Right to the Copyhold releaſes to the Wrong-doer, it is good; For till the Lord enters he is Tenant in Fait; Per Yelverton; but Walter ſeemed of another Opinion, and therefore the Reporter ſays Quære what Benefit he ſhall have by the Releaſe. Brownl. 149, 150. Mich. 19 Jac.

If a Copyholder be ouſted ſo as the Lord of the Manor is diſſeiſed, and the Copyholder releaſes to the Diſſeiſor, Nihil operatur. Le. 102. pl. 135. Paſch. 30 Eliz. B. R. Wakeford's Caſe.

4 Rep. 25. b. pl. 11. Paſch. 31 Eliz. B. R. Kite v. Quinton, S. P. reſolv'd, becauſe the *Diſſeiſor has no cuſtomary Eſtate on which the Releaſe* of the cuſtomary Right *may enure*; and alſo it will be prejudicial to the Lord, who thereby will loſe his Fine and Services. — Gilb. Treat. of Ten. 180. cites S. C. ——— Le. 102. pl. 135. Paſch. 30 Eliz. B. R. in Wakeford's Caſe. ——— Supplement to Co. Comp. Cop. 73. S. 8. cites S. C. ——— Gilb. Treat. of Ten. 283 cites S. C. & S. P. and ſays, that the Reaſon of this ſeems to be, that though a Releaſe cannot in its own Nature paſs away a Poſſeſſion, yet it may amount to a Signification of the Tenant's Mind to hold the Land no longer; for a Copyholder is a Tenant at Will, and therefore though the Poſſeſſion be not granted, any Thing amounting to a Determination of the Copyholder's Will is ſufficient to extinguiſh his Copyhold, but no Right to a Copyhold Eſtate is extinguiſhed by Releaſe, but where the Perſon that hath the Copyhold Eſtate comes to it rightfully, becauſe of the Prejudice the rightful Lord would be at, for in this Caſe he would loſe in his Damages againſt the Diſſeiſor, the Fine due for Admittance, and there would be a Tenant brought in againſt his Will, and an Eſtate or Will, grantable by Surrender only, paſs by Diſſeiſin and Releaſe.

12. *Copyholder is ouſted*, and ſo the Lord diſſeiſed, and the Copyholder *releaſes all his Right to the Diſſeiſor, and dies. His Heir enters, and brings Treſpaſs* againſt the Diſſeiſor, who pleads his Franktenement, and by the Court the Releaſe is clearly void, the Diſſeiſor never being admitted Copyholder. Hetl. 150. Mich. 5 Car. C. B. Mortimore's Caſe.

13. Releaſe to a Tenant in Poſſeſſion by a wrongful Title, *by a Feme Covert in Court*, who was examined ſecretly by the Steward, there need no new Admittance. 2 Show. 83. pl. 70. Mich. 31 Car. 2. B. R. Stone v. Exton.

(A. b) Pleadings. Surrenders.

Le 227. Blagrave v. Wood. S. C. but adjornatur.

1. PLEA in Ejectment that the Lands were Copyhold, and *that B. the Tenant ſurrendred* them *into the Hands of A. the Steward* to the Uſe of C. the Defendant, and that C. was accordingly admitted. B. *replies*, and concludes with *abſque hoc that A. was Steward.* Held to be no good Iſſue, for it *ſhould be Abſque hoc that B. made any Surrender.* Cro. E. 260. pl. 45. M. 33 and 34 Eliz. B. R. Wood v. Butts.

2. This is the *general Cuſtom* of the Realm, that every Copyholder may ſurrender *in Court*, and need not allege any Cuſtom therefore. So if *out of Court* he ſurrender *to the Lord himſelf*, he need not allege in Pleading any Cuſtom, but if he ſurrender out of Court into the Hands of the Lord, *by the Hands of 2 or 3 &c. Copyholders*, on by the Hands of the *Bailiff or Reeve &c.* or of any other, theſe Cuſtoms are particular, and therefore he muſt *plead* them. C. Litt. 59. a.

3. A. covenanted *to ſurrender to B. Copyhold Land upon Requeſt* ; B. aſſigned a *Breach, that he did not ſurrender it into the Hands of two Tenants of the Manor*, this is not ſufficient, for he may ſurrender it into the Hands of the Lord, or in Court, and the ſurrendring into the Hands of two Tenants, *is only a particular Way*. Sty. 107. Trin 24 Car. B. R. Freeborn v. Purchaſe. All 63. S. C. adjudg'd, and ſays it was ſo reſolved in B. R. Paſch. 9 Car. in Caſe of Sims v. Lady Smith.——Sty. 107. cites 9 Car. Sims v. Walker.

4. In *Replevin*, the Defendant made *Cognizance*, for *that M. was ſeiſed in Fee of a Cloſe, Parcel of the Manor of L. which Cloſe he demiſed to R. for 99 Years, and being ſeiſed of the Reverſion according to the Cuſtom of the Manor*, (omitting *ad voluntatem Domini) he ſurrendred it into the Hands of the Lord according to the Cuſtom* &c. and upon a Demurrer it was adjudged, that the Cognizance was inſufficient ; for the alleging that M. was ſeiſed in Fee ſecundum Conſuetudinem Manerii, without ſaying *ad voluntatem Domini*, muſt intend it a Freehold, which could not be convey'd by Surrender in Court and Admittance, without a ſpecial Cuſtom to paſs them in that Form. 2 Vent. 143. Hill. 1 & 2 W. & M. in C. B. Rogers v. Bradley.

[B. b] Copyhold. *Admittance.* In what Caſes the *Eſtate* ſhall be *in the [Perſon who has the Right to be admitted] Tenant before* Admittance.

This in Roll is Letter (M) in Fol. 502.

1. **IF the Cuſtom of a Manor be, that the Wife of every Copyholder for Life** ſhall have her Free-Bench **of the Tenement of her Husband, Dum Caſta & ſola vixerit after the Death of the Baron, the Law caſts the Eſtate upon the Wife, ſo that ſhe ſhall have the Eſtate before any Admittance ; and may make a Leaſe for a Year as another Copyholder may. Tr. 16 Ja. B. R. between * *Jurdan and Stone*, agreed per totam Curiam upon Evidence at the Bar. Hobart's Reports 244. between † *Howard and Bartlet*, per Curiam ; and there cited. P. 16 J. ‖ Rennington's Caſe adjudged.** * Hutt. 18. Trin. 6 Jac. S. C. The *Widow claim'd her Free Beneh, and pray'd to be admitted*, which the *Steward refuſed*, whereupon ſhe brought an Ejectment, and whether the Action lay, ſhe not being admitted (for it was agreed that no Fine was due) was the Queſtion. Reſolv'd, that her Eſtate ariſes out of that of her Husband's Eſtate, and if her Admittance had been neceſſary, ſhe did all in her Power to procure it, and *were an Eſtate is created by Cuſtom, that ſhall be an Admittance in Law.*

† Hob. 181. pl. 218 S. C. that this Eſtate is caſt upon her and veſted by Law.——2 Roll Rep. 178. Trin. 18 Jac. B. R. Walter v. Bartleet S. C. but S. P. does not clearly appear.——Cro J. 573. Waldoe v. Bartlett, S. C. and S. P. ſeems to be admitted.——Palm. 111. Waldor v. Barkley S. C. and S. P. ſeems to be admitted.

‖ Noy 29. Rennington v. Cole S. C. and S. P. adjudg'd. Becauſe no Fine is due to the Lord.

2. The Heir of a Copyholder may enter and *have an Action of Treſpaſs before Admittance. A Deſcent ſhall not bind the Heir of a Copyholder. He may ſurrender* unto a Stranger before Admittance. Supplement to Co. Comp. Cop. 71. S. 5. cites 4 Rep. [23. b. Trin. 26 Eliz. B. R.] Clark v. Pennyfeather.

3. A Copyholder ſurrendered to the Uſe of J. S. and the *Lord* of the Manor, *without any reaſonable Cauſe, refuſed to admit* him ; adjudged that he cannot enter without a ſpecial Cuſtom to warrant it, for till Admittance the Surrenderor continues in Poſſeſſion. Cro. E. 349. pl. 25. Mich. 36 & 37 Eliz. Berry v. Green. Supplement to Co. Comp. Cop. 72 S. 6. cites S. C.

2 Bulſt. 336. S. C. accordingly. — Mo. 842. pl. 1137. S. C. reſolv'd accordingly.

4. Surrenderee before Admittance has neither *Jus in Re*, nor *ad Rem*, nor has he any Remedy if the *Lord refuſes to admit*; per Holt Ch. J. Show. 87. cites Cro. J. 368. [pl. Paſch. 13 Jac. B. R.] Ford v. Hoskins.

Supplement to Co Comp. Cop. 70. S. 4. cites S. C. and ſays, it was reſolv'd in this Caſe, that he was not a Copyholder within the Cuſtom; for by the Admittance the Surrenderee hath no Poſſeſſion, and the Heir is in by Deſcent, and holds by the Copy of his Anceſtor, and ſo the Ceſtuy que Uſe is not a perfect nor compleat Copyholder, and it may be compared to the Caſe where a Man makes a Feoffment in Fee of Lands, and makes Livery within the View, it is no perfect Livery till he doth enter into the Lands, but the Feoffor may puniſh a Treſpaſs there done in the Interim, for it is but inchoatum until he enter; And ſo it is in Caſe of a Copyholder, the Surrender is but quaſi inchoatum, as before, till he be admitted to the Copyhold.

5. *Cuſtom &c. that a Copyholder might ſurrender out of Court into the Hands of two cuſtomary Tenants, to the Uſe of another, and that at the next Court the Surrenderee uſed to be admited; a Surrender was made unto the Hands of the Steward out of the Court*, but *the Party, to whoſe* Uſe it was made, *died before the next Court*; It was inſiſted, that he dying before Admittance, he cannot be ſaid to be a Copyholder within the Cuſtom, and by Conſequence cannot be poſſeſſed of the Copyhold Eſtate; and if ſo, then the Heir of the Surrenderor is in by Deſcent, and ſhall hold by the Copy of his Anceſtor; Roll Ch. J. ſaid, that this Caſe differs from the Caſe of ſurrendering into the Hands of Tenants, for it is in to the Hands of the Steward out of Court, which is good, and that the Lord's *Acceptance of his Rent is an Admiſſion*; But Bacon doubted; Sed adjornatur. Sty. 145, 146. Mich. 14 Car. Barker v. Denham.

6. A *Surrenderor of Copyhold Land continues ſeiſed till the Admittance of the Surrenderee*, and the Perſon to whoſe Uſe the Surrender is made is not Ceſty que Uſe in the mean Time, but when admitted he is in by Grant from the Lord; per Holt Ch. J. Wms's Rep. 17. Hill. 1700 B. R. in Caſe of Fiſher v. Wigg.

7. In the Caſe of a Surrender to the Uſe of A. the Lands were found to be *ſurrendred into the Hands of the Lord himſelf in full Court*, and that the Lord *aſſeſſed a Fine* upon the Surrenderee, *but never admitted* him; Adjudged per tot. Cur. that the Heir of the Surrenderee had no Title, for that the *Title* of the Surrenderee *is wholly by the Copy of the Court Roll made from the Entry* upon the Court Roll, which before Admittance can't be; but in Caſe of a Deſcent the Heir may ſurrender before Admittance, becauſe he has a Title by Deſcent, but the Lord in this Caſe ſhall have a Fine. 11 Mod. 73. pl. 4. Paſch. 5 Annæ B. R. Brown v. Dyer.

[B. b. 2] In what Caſes the Eſtate ſhall not [be *out of Surrenderor till Preſentment, or Admittance of Surrenderee.*]

This in Roll is Letter (M) pl. 2. in Fol. 502.

1. IF by the Cuſtom of the Manor the Copyhold ought to deſcend to the youngeſt Son, and the Copyholder in Fee ſurrenders it to the Uſe of himſelf and his Heirs, and dies before any Admittance upon the Surrender, and the youngeſt Son firſt enters, the eldeſt cannot juſtify his Entry upon him before Admittance. M. 10 Ja. B. R. adjudged.

2. If

2. If a Copyholder ſurrenders out of Court into the Hands of Tenants, according to Cuſtom, to the Uſe of another; before this Surrender is preſented at the next Court, or any Admittance of him to whoſe Uſe this Surrender is made, the Eſtate continues in the Surrenderor. Mich. 14 Ja. B. R. between *Froſwel and Welſh*, per Curiam. This in Roll is Letter (M) pl. 3. —Bridgm. 49. Froſett v. Walſhe S. C. and Crooke, Doderidge, and Haughton J. agreed the S P.———3 Bulſt. 214. S. C. adjudged.———Godb. 268. pl. 373. S. C. adjudg'd, that a Leaſe made by the Heir of the Surrenderor was good.——Cro. J. 403. pl. 1. S. C. adjudged——S. C. cited Bridgm. 83, 84.———S. P. admitted. Arg. Sty. 146.

3. But in that Caſe, if the Lord admits Ceſtuy que uſe for his Tenant, and accepts the Rent from him as his Tenant, the Eſtate ſhall be in him, before any Preſentment of the ſaid Surrender at the next Court by the Tenants, becauſe the Lord is not at any Prejudice by this, being ſatisfied his Duties, which is the Cauſe, that the Eſtate is not in the Ceſtuy que uſe upon a Surrender before Admittance. Mich. 14 Ja. B. R. between *Froſwell and Welſh*, per Curiam. This in Roll is (M) pl. 4. —It ſeems that the Words (and accepts) ſhould be (by Acceptance of.) —Godb. 268. pl. 373. S. C. agreed, that if the Lord takes Knowledge of the Surrender, and accepts the Cuſtomary Rent as Rent due from the Tenant being admitted, this ſhall amount to an Admittance; but otherwiſe if he accepts it as a Duty generally. ——3 Bulſt. 214. &c. Roſewell v. Welſhe S. C. and S. P. admitted.———Roll Rep. 415, 416 S. C. and S. P. by Haughton J. accordingly, but Doderidge and Crooke e contra.———Bridgm. 52. S. C. and S. P. by Haughton J. but the others contra.———Cro. J. 403. pl. 1. S. C. adjudged for the Heir of Surrenderor.———Supplement to Co. Comp. Cop. 69. S. 3. cites S. C. ſays it was doubted by the Juſtices, but not reſolv'd whether the Acceptance of the Rent by the Lord at the Hands of the Ceſty que Uſe did amount to an Admittance or not.——S. P. admitted, arg' 2 Sid. 61. ——Gilb. Treat. of Ten. 266. cites the ſame Caſes, and ſays, If we look into the Reaſon of the Thing, we may conclude, that any Thing that expreſſes the Lord's Conſent to the Surrender, ſhould amount to an Admittance; for it is his Conſent only that is requiſite after the Surrender, to make the Surrenderee a Tenant; and what Matter is it whether that be done by a Dominus conceſſit & Admiſſus eſt, or by any Act that amounts to as much?

4. If a Copyholder *ſurrenders* his Land *to the Uſe of J. S.* and the *Lord grants the ſame to J. S. accordingly*, and thereupon *he enters*, yet he is no good Copyholder till he be admitted; but *if J. S. appears at the Lord's Court, and paſſes on the Lord's Homage*, or the *Lord accepts his Rent or his Fine* for the ſame Copyhold, then he is become a good Copyholder without any further Admiſſion. Calth. Reading. 63.

(C. b) In whom the Eſtate ſhall be ſaid to be before Admittance of Surrenderee, and whether, when admitted, he ſhall be ſaid in by the Lord or by Surrenderor.

1. WHEN a *Copyholder ſurrenders to the Uſe of another*, and the *Lord admits him, he is in by the Surrenderor*. Reſolved. 4 Rep. 27. b. pl. 15. Trin. 26 Eliz. B. R. Taverner v. Cromwell. Gilb. Treat. of Ten. 241. cites S. C. and ſays, that this being ſpoke ſo generally cannot by any fair Conſtruction but extend to all Surrenders, either by Tenant for Life or in Fee; but that in the Caſe of King v. Lord [Lover] it is adjudged, that if a Copyholder for Life ſurrenders to the Uſe of another for Life, who is accordingly admitted, that he is in from the Lord, and not from the Surrenderor; [See [P. 5] pl. 3. and the Notes there] but Ld. Ch. B. Gilbert ſays, Quære well of this Matter; for the Tenant for Life has not ſuch Eſtate as to be allowed to grant for Life to another; but when a Copyholder in Fee ſurrenders to the Uſe of another for Life, he is in Quaſi by the Copyholder; this is againſt Ld. Coke, and, as it ſeems, againſt Reaſon, for the Lord is but an Inſtrument to convey, therefore he is compellable to grant according to the Sur-

Surrender, and no Charge by him, while it is in his Hands, ſhall be of any Force, and he that ſurrendered ſhall pay the Services, and the Words of Coke are general, that he ſhall be in by the Copyholder in Admittances upon Surrender; yet Coke ſays in another Place, that by Surrender to the Lord out of Court the Eſtate paſſeth to the Lord under a ſecret Condition, that it be preſented at next Court; but it hath been adjudged ſince, that by Surrender to the Lord by the Hands of two Tenants nothing paſſed, but the Intereſt remained in him that made the Surrender, and there can be no Difference where the Lord takes himſelf by the Hands of two Tenants, and if it be in the Lord, how can the Copyholder pay the Services, or take the Profits after Surrender, or make another Surrender?

This in Roll is Letter (N) in Fol. 502.

[D. b] *What Perſons may enter before Admittance*, and *how* they ſhall be *ſeiſed* of it, *and* in what Manner it ſhall *deſcend*.

Mich. 23 & 24 Eliz. C. B the 3d Reſolution. —Adjudged

1. CO. 4. Brown 22. b. reſolved, that if a cuſtomary Eſtate of Inheritance deſcends to the Heir he may before Admittance enter, and take the Profits.

accordingly, and that he may bring Treſpaſs before Admittance. 4 Rep. 23. b. pl. 7. Trin. 26 Eliz. B. R. the 1ſt. Reſolution in Caſe of Clarke v. Pennyfeather ——— Noy. 172. Simpſon v. Gibliar. S. P Arg. and the better Opinion of the Court ſeem'd to be ſo. ——— Lane 20. Paſch 4 Jac. in the Exchequer, S. P. admitted by all the Barons.

Mo. 125. pl. 272. Rot. 1229. Trin.

2. Co. 4. Browne 22. [b.] adjudged, that there ſhall be a Poſſeſſio Fratris before Admittance.

23 Eliz. Anon. ſeems to be S. C. the Copyholder had granted a Leaſe for 12 Years by Licence rendring Rent, and died, leaving a Son of two Months old and a Daughter by one Venter, and a Daughter by another Venter. The Death of the Father was preſented, and that the Son is Heir, and his Age. Afterwards the Son, (before any Rent Day incurred, or any Admittance to the Copyhold, for any Guardian aſſign'd) died. Adjudg'd that the eldeſt * Daughter is ſole Heir, and that the Deſcent of the Reverſion upon the Leaſe for Years before Day of Payment of the Rent is Poſſeſſio Fratris quæ facit ſororem eſſe Hæredem.—Co. Comp. Cop. 53. S. 41. S P. and cites S. C. But *if the Leaſe had been determined living the Son by the firſt Venter, and afterwards he had died before any actual Entry* made, the Law would have fallen out otherwiſe, becauſe there was a Time when he might have lawfully entred.——4 Rep. 21. pl. 1. Browne's Caſe ſays, that the Copyholder had Iſſue a Son and a Daughter by one Venter, and a Son by another Venter, and died, and then the eldeſt Son died before Admittance, and adjudg'd that the Land ſhall deſcend to the Daughter of the whole Blood.——[And it ſeems that the Caſe in Moor as above is miſprinted in the ſtating of it.]—— Co. Comp. Cop. 51. S. 41. and Supplement 71. S. 2. cites S. C. according to 4 Rep. ut ſupra.

* The Poſſeſſion of the Termor ſhall be the Poſſeſſion of the Heir. D 291. b. Marg. pl. 69. cites it as adjudg'd 23 Eliz. Rot. 1229. Holmes v. Facie.

In what Caſes there ſhall be a Poſſeſſio Fratris. See more at [C. e] Infra.

3 D. 12 El. 291. 69. accordingly by two Juſtices, and there alſo it was held by two Juſtices, that where, after the Death of the Father, the Copyhold deſcends to the Son, within Age, and the Cuſtody of the Land is committed to his Mother by the Lord during his Nonage, who enters, and after the Son dies before any Admittance, yet this Poſſeſſion of the Mother, as Guardian, gives the actual Poſſeſſion to the Son, and therefore his Siſter of the half Blood cannot be Heir to him.

Supplement to Co. Comp. Cop. 72. S. 6. cites S. C. for after the Admittance they are in him who made the Surrender, and not by the Lord.

4. R. B. ſurrender'd *to the Uſe of himſelf and his M. Wife without limiting any Eſtate*, if the Lord make Admittance to M. and R. and to the Heirs of R. this is but an Admittance to them for their Lives, the Reverſion over to R. B. and the Reverſion doth not remain in the Lord, the Surrender into his Hands is general. 4 Rep. 29. b. pl. 18. the third Reſolution in Caſe of Bunting v. Lepingwell.

5. C.-

5. *Copyholder* in Fee *having Iſſue two Sons, R. and T. ſurrendred* his Lands *to the Uſe of R. for Life, and afterwards to the Uſe of T. in Fee, both the Sons T. being within Age, ſurrendred* the Lands *to the Uſe of W. in Fee, who was admitted. R. and T. died, but T. left Iſſue A. who was admitted, and entred upon W.* the Surrenderee; and it was adjudged lawful, and that he ſhould not be put to his Plaint in the Nature of a Dum fuit infra Ætatem. Le. 95. pl. 124. Hill. 30 Eliz. B. R. Knight v. Footman.

Cro. E. 690. pl. 17. Knight. v. Fortipan. S. C. adjudged the Entry lawful; for a Surrender is but a Conveyance by

Matter of Fact and no Higher and may bring Treſpaſs before Admittance.

6. Though the *Heir* be not admitted, yet he may *enter and take the Profits*, and *make a Leaſe* according to the Cuſtom, or bring an Action of *Treſpaſs* againſt him that diſturbs him; but if the Lord require his Fine or his Services, and the Heir refuſed to do them, this may be a *Forfeiture* of his Copyhold, but *until lawful Seiſin made by the Lord* (becauſe it belongeth to him) the Heir may intermeddle with the Poſſeſſion, albeit he be not admitted by the Lord where it is an Eſtate of Inheritance by the Cuſtom. Poph. 39. Hill. 36 Eliz. B. R. Bullock v. Dibley.

It was admitted by all the Barons, that if a Copyholder ſurrenders to the Uſe of a younger Son and dies, this younger Son cannot bring an Action till Admittance; but if the Copyholder had deſcended to the Heir he might have an Action before Admittance. Lane 20. Paſch. 4 Jac. in the Exchequer, Anon.

7. A Copyhold was granted to A. and his Wife and their Heirs. A. dies. The Wife dies. The Lord admits a Stranger. The *Heir* of the Wife enters and brought *Treſpaſs* againſt the Stranger, and held good *without Admiſſion*. Noy. 172. Simſon v. Gillion.

Cro E. 90. Knight v. Fortipan. S. P.—3 Buls 216. cites 4 Rep. 23. b. Pennyfeather.

8. If Copyholder *ſurrenders to B.* and the *Steward will not admit him*, and B. enters and Occupies the Land, and the *Lord brings Ejectment*, B. though not admitted, may plead Not Guilty, and ſhall have a Verdict, Quære Rationem, for in reſpect of the Poſſeſſion it ſeems the Lord's Title is eldeſt; for his Title to the Freehold is good and lawful, and conſequently to the Profits of the Freehold, unleſs another can make Title to the Profits which in this Caſe ſeems difficult without an Admittance. Quære if the Reaſon is not that the *Lord is Particeps Criminis* ſuppoſing him not to ſuffer the Steward to admit B. Yelv. 16. Mich. 44 & 45 Eliz. B. R. Arnold v. George.

Supplement to Co. Comp. Cop. 71 S. 5. cites S. C. that it ſhall be found againſt the Lord becauſe he is Particeps Criminis, becauſe it ſhall be intend that the Lord would not ſuffer the Steward to admit him. [And Lord Coke makes no Quære of it]——Gilb. Treat. of Ten. 273. cites S C. and takes Notice of a Nota there, viz. that the Surrender was but of a Copyhold to him, & tribus Aſſignatis ſuis, ſo that by his Death the Eſtate in the Copyhold determined &c. This is a very ſtrange Report, for the Quæres and Reaſons of the Caſe confound it, and the Lord Ch. Baron ſays, it ſeems to me, that the Reaſon of the Caſe was, becauſe that after the Surrender the Eſtate continued in the Snrrenderor, and not in the Lord; and ſo the Poſſeſſion of the Surrenderee was illegal againſt the Surrenderor; yet it was good againſt every Body elſe, and ſo againſt the Lords Leſſee; for when the Lord refuſes to admit, the way is to compel him in Chancery, and no Action upon the Caſe lies againſt the Lord for Non Admittance. 'Tis ſaid in Lex Cuſt. 158. that an Action lies for the Surrenderor; ſed quære; indeed the Reaſon given was, becauſe the Surrenderee hath no Intereſt which the Surrenderor hath.——The Lord of a Manor has that Prerogative in his Copyholds, that no Stanger can be his Tenant thereof, without his ſpecial Aſſent, and Admiſſion, and for that Cauſe *a Copyhold ſhall not be liable to any Executions of Statutes or Recognizances, neither ſhall be Aſſets* in Debt or Formedon, neither is contained in any of the Statutes aforenamed; for if it were, then ſhould the Lord be forced to have a Copyholder whether he will or no, which is againſt the Nature of a Copyhold; and therefore a Stranger can never enter tho' a Surrender made to his Uſe be accepted, except he be admitted Tenant, *but otherwiſe of the Heir*, for he may enter and take the Profits before the Admittance after the Death of his Father. Calth. Reading, 61, 62.

Supplement to Co. Comp. Cop. 71. S. 5. cites S. C.

9. Lord of a Manor *ſeiſes a Copyhold without Cauſe, and grants it to J. S. in Fee.* J. S. died ſeiſed, and his Heir is admitted. The firſt Copyholder dies, and his Heir enters and ſurrenders to the Uſe of a Stranger. Reſolved, that a *Deſcent* of a Copyhold ſhan't take away the Entry of another Copyholder that has Right, and that the *Heir entering without Admittance* his Entry is lawful, and being in, his Surrender is good before Admittance. Cro. J. 36. pl. 10. Trin. 2 Jac. B. R. Joyner v. Lambert.

10. Theſe *Admittances upon Surrender differ from Admittances upon Deſcents* in this, that in Admittances upon Surrender nothing is veſted in the Grantee before Admittance, no more than in the voluntary Admittances; but in Admittances upon Deſcents the Heir is Tenant by Copy immediately upon the Death of his Anceſtor, not to all Intents and Purpoſes, for perhaps he *cannot be ſworn of the Homage before, neither can he maintain a Plaint in the Nature of an Aſſiſe in the Lord's Court before*, becauſe till then he is not compleat Tenant to the Lord, no farther forth than the Lord pleaſes to allow him for his Tenant. Co. Comp. Cop. 53. S. 41.

11. And therefore if there be *Grandfather, Father, and Son*, and the *Grandfather is admitted, and dies*, and the *Father enters, and dies before Admittance*, the *Son ſhall have a Plaint in the Nature of a Writ of Aiel, and not an Aſſiſe of Mortdanceſter*; ſo that to all Intents and Purpoſes the Heir, till Admittance, is not compleat Tenant, yet to moſt Intents, eſpecially as to Strangers, the Law takes Notice of him as of a perfect Tenant of the Land inſtantly upon the Death of his Anceſtor, for he *may enter into the Land before Admittance, take the Profits, puniſh any Treſpaſs* done upon the Ground, *ſurrender into the Hands of the Lord* to whoſe Uſe he pleaſes, ſatisfying the Lord his Fine due upon the Deſcent, and by Eſtoppel he may prejudice himſelf of his Inheritance. Co. Comp. Cop. 53. S. 41.

3 Le. 327. in Caſe of Glover v. Cope —— Le. 100. Rumney v. Eve. ——

12. The Heir may recover in *Ejectment* upon his Anceſtor's Admittance. Vern. R. 392. pl. 364. Hill. 1685. in Caſe of Dancer v. Evett. ——N. Ch. R. 107. Arg.

This in Roll is Letter (X) in Fol. 505.

[E. b] *What* ſhall be ſaid *an Admittance.*

* Cro. E. 504, pl. 29. Mich. 38 & 39 Eliz. B. R. Gyppin v. Bunney, S. C. the Surrender in this Caſe was made by a Remainderman in Fee, where the Tenant for Life had been admitted; and Popham ſaid, that Tenant for Life and he in Remainder have but one Eſtate in Law, and therefore the Admittance of the one ſhall ſerve for the other; to which Fenner J. agreed; but becauſe the other Juſtices were abſent it was adjourn'd. ——— Mo. 465. pl. 658. Tiping v. Bunning, S. C. adjudg'd, that the Admittance of Tenant for Life is the Admittance of him in Remainder. —— Gouldsb. 95. pl. 9. S. C & S. P. argued. —— S. P. reſolv'd. Mo. 358. pl. 488. Trin. 36 Eliz. Dell v. Higden. ——— See (P b) pl. 1 and the Notes there.

† Cro. E. 662. pl. 11. S. C. but S. P. does not appear.

1. IF a Copyholder in Fee ſurrenders to the Uſe of another, and after at another Court Ceſtuy a que Uſe **the Surrender was**, ſurrenders the Land to the Uſe of another, **this ſhall enure as an Admittance upon the firſt Surrender, and after as a Surrender**; for by the Acceptance of the Surrender he is admitted to be Tenant. **Dubitatur, 38, 39 Eliz. B. R. between** * *Keping and Bunning*, **Paſch. 41 Eliz. B. R. in** † **Calchin's Caſe.**

2. If

2. If a Copyholder ſurrenders to the Uſe of another, **and after the** Lord having Notice **thereof,** accepts the Rent from Ceſtuy que Uſe out of Court, **this is an Admittance in Law. Mich. 14 Ja. B. R. between** *Froſwell and Welſh*, **per Curiam.** Gilb. Treat. of Ten. 266. cites S. C. and the Caſe above (pl. 1.) and ſays, that by the ſame Reaſon that the Acceptance of a Surrender before Admittance amounts to an Admittance, the Admittance of ſuch a Surrenderee's Surrenderee is a good Admittance of the firſt Surrenderee. ——— See [B. b. 2] pl. 3. S. C. and the Notes there.

3. If a *Surrender* be of a Copyhold *to J. S.* and *before Admittance J. S. doth ſurrender the Land to W. R. who is admitted*, yet nothing paſſeth to W. R. by this Admittance. Reſolv'd; For J. S. had nothing, and the Admittance of W. R. ſhall not be taken by Implication to be the Admittance of himſelf. Yelv. 145. Mich. 6 Jac. B. R. Wilſon v. Weddall. Brownl. 143 S. C. adjudged, but it ſeems to be only a Tranſlation of Yelv. ——Supplement to Co. Comp Cop. 70. S. 4. cites S. C. ——— Gilb. Treat. of Ten. 259. cites S. C. accordingly. — If a Copyholder ſurrenders his Eſtate *to the Uſe of J. S who ſurrenders the ſame to J N.* and the Lord admits J. N. this is good, for the Acceptance of the Surrender of J. S is in Law an Admittance of him; Per Haughton J. 3 Bulſt. 232. Mich. 14 Jac. in Caſe of Elkin v. Waſtell. But Doderidge J. contra. ——— 3 Buls. 237. &c. Mich. 14 Jac. Rawlinſon v. Greaves, S. P. dubitatur.

4. When the *Heir* of a Copyholder is to be admitted, the Words *Admiſſus eſt* are only uſed, and not the Words *Dominus conceſſit*, which laſt are the Words of Grant of the Lord uſed upon every *Surrender*, and the Reaſon is, becauſe the Anceſtor of the Heir had the Copyhold Eſtate before. Arg. 3 Bulſ. 216. Mich. 14 Jac. in Caſe of Roſwell v. Welſh.

5. A Copyholder *ſurrendred out of Court*, according to the Cuſtom of the Manor, *which at the next Court was preſented, and Entry thereof made by the Steward*, viz. *Compertum eſt per Homagium &c. but no Admittance*; Afterwards *Ceſtuy que Uſe ſurrenders before Admittance*, and the firſt Copyholder ſurrenders to the Plaintiff; Haughton Juſtice held, that he could not ſurrender before Admittance, and the Entry of the Surrenderee doth not make an Admittance, for this being the ſole Act of the Steward, ſhall not bind the Lord, and it is not like to the uſual Form of an Admittance, for that is, Dat Domino de fine, fecit Fidelitatem & Admiſſus eſt inde tenens. Doderidge J. agreed. Poph. 127, 128. Mich. 14 Jac. B. R. Rawlinſon v. Green. 3 Bulſt. 137. S. C. Curia adviſare vult, and ended by Mediation. — Supplement to Co. Comp. Cop. 70. S. 4. cites S. C. and ſays, it was the Opinion of the Court in this Caſe, for 1ſt. The that none of the colourable Things did imply a perfect Admittance to the Copyhold; Acceptance of the Preſentment by the Steward from the Homage was no more than what he was bounden to do, as being Judge of the Court. 2dly, The Entry of it in the Roll was but an Office of Duty, being but an Evidence for the Lord, as alſo for him to whoſe Uſe the Surrender was, and ſo was the Delivery of the Copy to J. S. the Ceſtuy que Uſe; but none of theſe Things did imply the Conſent or Will of the Lord, that the Ceſtuy que Uſe ſhould be admitted, or have the Lands according to the Surrender, and all theſe Things together do not imply any Admittance, for all of them may be done, though no Admittance be in the Caſe. ——— Gilb. Treat. of Ten. 268. cites S. C and ſays, the Entry of Compertum eſt per Homagium doth not make an Admittance, for that only ſhews there was a Surrender, but implies no Aſſent to the Surrender; but the Entry of Dat Domino pro fine & fecit Domino Fidel. & Admiſ. that is the Admittance. It is ſaid, that in this Caſe the Surrender was preſented, and the Surrenderee accepted, and a Copy granted him, and he ſurrendered again, and this Surrender was preſented, and a Copy granted, and he accepted as a Copyhold Tenant; in this Caſe nothing is ſaid to be reſolved, but the Court ſaid, that he to whoſe Uſe the Surrender is made, had not any Eſtate before Admittance, but they ſaid nothing to the Point, whether he were admitted or not; but it ſeems, that in that Caſe there is a very good Admittance, for he was accepted as Tenant, and I ſhould think it was that made him Tenant, and not the Entry of it in the Roll.

6. *Acceptance of Rent* by the Lord of one to whoſe Uſe a Surrender is made, *as of his Tenant* before any Preſentment of the Surrender at the next Court, this will veſt the Eſtate in the Surrenderee; but if the Lord accepts the Rent *as a Duty generally* it is otherwiſe. Godb. 269. pl. 373. Mich. 14 Jac. C. B. Froſwell v. Welſh. Sty. 146. S P. by Roll Ch J. ——If the Lord receives *Rent*, or *takes a Fine* before Admittance, Quære if this will not amount to an Admittance. 11 Mod. 70 pl. 7.

7. Though

7. Though the *aſſeſſing a Fine* be no Admittance, yet if the Steward *accepts a Fine* of him ſo *aſſeſs'd*, as of a Copyholder, this a good Admittance of him; Arg. 3 Bulſt. 239. Mich. 14 Jac.

S. P. per Haughton J. in Caſe of Elkin v. Waſtall. 3 Bulſt. 232. Mich. 14 Jac.

8. If the Lord *ſaith* to the Copyholder you have ſurrendered to the Uſe of A. *to which Surrender I agree*, this is good, and ſhall make him to be a good Copyholder, per Haughton, to which the Court agreed. 3 Bulſt. 219. Mich. 14 Jac. in Caſe of Roſewell v. Welſh.

9. If a Copyholder *ſurrenders* his Eſtate *to the Uſe of J. D.* and *the Lord meeting with him ſaith ſuch a Surrender is made to your Uſe, to which I do agree, or am content therewith, and that you ſhall be my Tenant*, theſe Sayings ſhall amount unto good Admittances, and ſhall make him to be a good Copyholder without any other Admittance, per tot. Cur. 3 Bulſt. 232. Mich. 14 Jac. in Caſe of Elkin v. Waſtell.

10. Winch ſaid, that the *Admittance* of the Lord, viz. the *Leſſee of the Manor, amounts to a Grant to him who had a Title*, but it is *otherwiſe if it is to him who was in by Wrong, as by Diſſeiſin*, cites 4 Rep. 22. which was granted by all the Court. Win. 67. Paſch. 21 Jac. C. B. in Caſe of Haſſet v. Hanſon.

11. If a *Surrender be to the Uſe of J. S.* and afterwards *J. N. is admitted*, the *Conſent of J. S. afterwards* makes this a good Admittance; Per Glyn Ch. J. 2 Sid. 61. Hill. 1657.

2 Vern. 120. 11. 120. S. C. that a Bill brought by J. S. againſt the Wife and Daughter after the Husband's Death was diſmiſſed, but without Coſts.

12. A. *purchaſes* a Copyhold *in his own, his Wife, and Daughter's Names*, and afterwards *ſurrenders it for the ſecuring a Debt* to J. S. J. S. is not intitled to any Part of the Lands, it being an Advancement for the Wife and Daughter, and the Husband and Wife taking one Moiety thereof by Intireties. Chan. Prec. 1. Hill. 1689. Back v. Andrews.

13. Admittance *by Virtue of a forged Letter of Attorney* in the Name of a Copyholder *to ſurrender* a Copyhold *to the Uſe of J. S.* and the Attorney ſurrenders accordingly, whereupon J. S. is admitted, is a void Admittance; Per Macclesfield C. 2 Wms's. Rep. 77, 78. Trin. 1722. in Caſe of Hildyard v. S. S. Company and Keate.

This Roll is Letter (Q) in Fol. 503.

[F. b] *What* ſhall be ſaid *an Admittance according to a Surrender.*

[Or rather, How the Lord is conſider'd as to his Power of admitting, and where the Admiſſion is different from the Surrender, How it ſhould operate.]

S. P. and he that is admitted ſhall not be ſubject to the Charges of the Lord.

1. THE Lord is but an Inſtrument to admit Ceſtuy que uſe; for no more paſſes to the Lord than to ſerve the Limitation of the Uſe; and Ceſtuy que uſe when he is admitted ſhall be in by him that made the Surrender, and not by the Lord. Co. Lit. 59. b.

4 Rep. 27. b. in pl. 15. cites it as adjudged Hill 35 Eliz. C. B. in Caſe of Taverner v. Cromwell.

Fol. 504.

2. If a Man ſurrenders to the Uſe of J. S. and J. D. for their Lives, the Remainder over to another, and J. S. and J. D. are admitted in Fee,

Fee, yet this ſhall not alter their Eſtate, but they ſhall be ſeiſed according to the Surrender. My Reports, 14 Ja. *Lane and Pannel* adjudged. Roll Rep. 238. pl. 9. S. C. adjornatur. —— Ibid. 317. pl. 28. S. C. adjornatur. —— Ibid. 438. pl. 3. S. C. adjudged per tot. Cur. —— Gilb. Treat. of Ten. 290. cites S. C. and makes large Obſervations thereupon, which ſee there.

3. If J. *ſurrender to the Uſe of J. S. for Life*, and the *Lords admits him in Fee*, an Eſtate for Life only paſſes. Co. Comp. Cop. 53. S. 41. cites 4 Rep. 29. Bunting v. Lepingwell.

The Lord hath only a cuſtomary Power to made Admittances according to the Surrender, and ſo far as he executes that Power the Admittance is good; but where he goes beyond that Power he acts without a Warrant,

4. *So if J. ſurrender without mentioning any certain Eſtate*, becauſe by Implication of the Law *Eſtate for Life only Paſſes, tho' the Lord admits in Fee*, no more does paſs than the Implication of Law will warrant. Co. Comp. Cop. 53. S. 41. cites 4 Rep. 29. Bunting v. Lepingwell.

5. If J. *ſurrender with the Reſervation of a Rent*, and the *Lord admits, not reſerving any Rent*, or reſerving a *leſs Rent* than J reſerved upon the Surrender, this Admittance is wholly void. Co. Comp. 53. S. 41. cites 4 Rep. 29. Bunting v. Lepingwell.

6. *But if the Lord reſerves a greater Rent*, then the *Reſervation is void only for the Surplaſage*, and the Admittance ſo far current as it agrees with my Surrender. Co. Comp. Cop. 53. S. 41. cites 4 Rep. Bunting v. Lepingwell.

and it is void; But if the *Surrender* be *abſolute, and the Admittance conditional*, the Admittance is good, and the Condition is void; If the *Surrender* be *conditional, and the* Admittance *abſolute*, that is void; If the *Surrender be to the Uſe of J. S. and the Lord admits J. N.* this is void, and *he may afterwards admit J. S. If he admits J. S. and a Stranger*, J. S. takes all, for the Stranger's Admittance is void. The Reaſon of theſe Diverſities are, becauſe when the Lord Acts contrary to his Warrant or Power, his Acts are void, but when he Acts according to his Power is one Thing, but beyond it in another, for what he acts according to his Power he hath a Warrant, but for what he acts beyond he hath no Warrants, and ſo it is void. Gilb. Treat of Ten. 180, 181.

7. If J. *ſurrender upon Condition*, and the *Lord omits the Condition*, the Admittance is wholly void; But if my *Surrender be abſolute*, and the Lord's *Admittance be conditional*, the *Condition is void, but the Admittance* in all Points elſe *is good*. Co. Comp. Cop. 53. S. 41. cites 4 Rep. 25. Kite v. Queinton.

8. A. W. *ſurrenders to the Uſe of W. W. and his Heirs; the Steward admts W. W. and Joan his Wife, and their Heirs.* The Lord here by the Cuſtom has but a cuſtomary Power to make an Admittance Secundum Formam & Effectum ſurſum-reddditionis, and this is not like the Caſe of Feoffees at the Common Law, and tho' the Lord grant the Eſtate to another, all this is without Warrant, notwithſtanding the Lord may make an Admittance according to the Surrender. 4 Rep 28. b pl. 17. Trin. 33. Eliz. B. R. Weſtwick v. Wyer.

9. *So* if a *Surrender be to the Uſe of one for Life*, and the *Lord admits him to have and to hold to him and his Heirs*, yet he who is admitted has but an Eſtate for Life, and in the Caſe above, the Admittance ſhall enure only to the Baron, without an Eſpecial Cuſtom, or other ſpecial Matter, which is not in this Caſe. 4 Rep. 28. b. pl. 17. Trin. 33 Eliz. B. R. Weſtwick v. Wyer.

10 If a Copyholder *ſurrenders to the Uſe of J. S.* and the *Lord* after ſuch Surrender *grants the Land to Ceſty que Uſe and a Stranger*, all ſhall enure to Ceſty que Uſe. 4 Rep. 28. b. Trin. 33 Eliz. B. R. Weſtwick v. Wyer. Supplement to Co. Comp. Cop. 71. S. 6. cites S. C.

11. *The Reaſon* of theſe Diverſities *are theſe; where an Authority is given* to any one to execute any Act, *and he exeeutes it contrary to* the Effect of *his Authority, this is utterly void; But if he* executes his Authority, and withal *goes beyond the Limits of his Warrant, this is*

void for that part only wherein he exceeds his Authority. Co. Comp. Cop. 53. S. 41.

If the Copyholder *Surrender* the Lands *without a Condition*, and the *Lord admits* the Tenant *upon a Condition*, the Condition is void; For that after the Admittance the Surrenderee is in by him that made the Surrender, and not by the Lord. Supplement to Co. Comp. Cop. 71. S. 6. cites 4 Rep. 32 Eliz. Weſtwick's Caſe.

12. Where the Lord *admits in another Manner than the Surrender appoints* 'tis void. Brownl. 127. Hill. 5 Jac. in Caſe of Allen v. Naſh.

13. Copyholder that comes in *voluntary Grant* ſhall not be ſubject to the Charges or Incumbrances of the Lord before the Grant. 8. Rep. 63. b. Mich. 6. Jac. in Swayne's Caſe.

14. A Copyholder *ſurrenders to the Uſe of B. and his Heirs.* The *Steward admits him to him, and the Heirs of his Body.* Notwithſtanding this Admittance the Eſtate ſhall be to him and his Heirs according to the Surrender; per Mountague Ch. J. 3 Bulſt. 240. Mich. 14 Jac.

15. The Lord of a Copyholder is only an Inſtrument to admit the Copyholder, and *ought to admit him according to the Surrender*, or otherwiſe the Admittance is not good. Sty. 462. Mich. 1655. B. R. Hether v. Bowman.

Gilb. Treat. of Ten. 269. cites S. C. but ſays Quære of this.

16. If a *ſurrender* be *to the Uſe of J. S.* and *J. N. is admitted*, *and J. S. conſents*, this is a good Admittance; per Glin Ch. J. 2 Sid. 61. Hill. 1657. in Caſe of Blunt v. Clark.

17. It ſeems that the *Preſentment* of a Surrender in Court *is only by way of Inſtruction to let the Lord know of the Surrender*, and accordingly he may admit, for it is apparent that a Preſentment is not of Neceſſity, becauſe the Lord may admit out of Court, and *any Act of the Lord's conſenting to the Surrender will amount to an Admittance*, which plainly ſhews that a Preſentment is only to ſhew there was ſuch a Surrender; for if it were of Neceſſity, then there could be no Admittance out of Court, nor any Act implying the Lord's Conſent would be tantamount to an Admittance; and then if we go to the Reaſon of the Thing, ſince the Eſtate is only to be ſurrendered to the Lord, and by him transferred to the Surrenderee, if he accept the Surrender, and grants an Admittance, which is all that can be done, what need is there of a Preſentment, and of what Uſe can it be, for the Homage to preſent a Surrender, in order for the Lord's Admittance, when the Lord may take Notice that there was ſuch a Surrender, accept it, and admit accordingly? The Eſtate, as it was derived from the Lord, ſo it muſt be ſurrendred to him, and the Preſentment makes no Part either of the Surrender or Admittance; in itſelf it is nothing but a Notification that there was ſuch a Surrender, which if the Lord takes Notice of without a Preſentment, it fruſtrates the End of a Preſentment, and the Preſentment is no ways of Uſe; therefore it ſeems, that if a Surrender be made, and then a wrong Preſentment be made of this Surrender, and then Admittance is made according to the Surrender, that this is good; for only the Preſentment can be void, and then there is an Admittance upon a Surrender without any Preſentment, which for the Reaſons before ſeems to be very good. Gilb. Treat. of Ten. 262, 263.

(G. b) In what Caſes an Admittance is Neceſſary. And the Effect thereof.

See (M. b) per tot.

1. D. A *Copyholder having a Son about five Years old, ſurrendred* &c. *that the Lord might grant de novo to the Uſe of himſelf for Life, and afterwards to the Uſe of his Wife, during the Nonage of his Son, and afterwards to his Son in Tail.* D. ſoon after *died, before he was admitted* but his Widow was admitted accordingly, *and married again.* It was held, that the *ſecond Husband ſhould have the Lands during the Infancy of the Son, and need not be admitted*, for he is not in of any new Eſtate but in the Eſtate of his Wife as Aſſignee. 3 Le. 9. pl. 22. 7 Eliz. C. B. Dedicot's Caſe. Glib. Treat. of Ten. 272. cites S. C. — Ibid. 316. cites S. C.

2. If a Copyholder *ſurrenders to the Uſe of another for Years*, and the *Leſſee dies*, his *Executors* ſhall have the Reſidue of the Term without any Admittance; Arg. Le. 4. pl. 8. cites it as adjudg'd, 8 Eliz. C. B. 4 Le. 118. pl. 236. Arg. cites S. C.

3. Where a *cuſtomary Eſtate deſcends to the Heir* he may enter before Admittance and take the Profits, and he *may ſurrender to the Uſe of another before Admittance, but not to prejudice the Lord of his Fine* due by the Cuſtom upon the Deſcent. Reſolv'd. 4 Rep. 22 b. Mich. 23 & 24 Eliz. C. B. the 3d Reſolution in Browne's Caſe.

4. Lord of a Manor of which Bl. Acre is held by B. by Copy in Fee, according to the Cuſtom, *made Feoffment of Bl. Acre to J. S.* The Copyholder dies. Though J. S. has not any Court, ſo that the Heir cannot be admitted, nor the Death of his Anceſtor preſented, becauſe *but one Tenant*, yet per Cur. the Copy ſhall bind J. S. and the Ceremony of Admittance is not neceſſary in this Caſe. 4 Le. 230. pl. 364. Mich. 29 Eliz. C. B. Bell v. Langley. 4 Le. 208, 209. pl. 257. Beale v. Langley S. C.

5. Surrender *is but* a Conveyance by Matter of Fact and no higher; ſo that if an *Infant* Copyholder ſurrenders and dies, his Heir may enter and bring Treſpaſs before Admittance. Cro. E. 90. pl. 17. Hill. 30 Eliz. B. R. Knight v. Fortipan.

6. If the *Death of the Anceſtor* be *not preſented, nor Proclamation made*, the Heir is at no Miſchief, though he comes not to be admitted, notwithſtanding his being of full Age. Le. 100. pl. 128. Paſch. 30 Eliz. B. R. in Caſe of Rumney v. Eve.

7. If a Copyholder dies, his *Heir within Age*, he is not bound to come to any Court during his Nonage to pray Admittance. 3 Le. 221. pl. 294. Paſch. 30 Eliz. B. R. Anderſon v. Hayward. 4 Le. 30. pl. 84. S. C. in totidem Verbis.

8. If the *Death of the Anceſtor* be *not preſented, nor Proclamation made*, the Heir is not at any Miſchief if he does not come in and pray Admittance, altho' he be of full Age. 3 Le. 221. pl. 294. Paſch. 30 Eliz. B. R. Anderſon v. Hayward. 4 Le. 30. pl. 84. S. C. in totidem Verbis.

9. *Ceſty a que Uſe* ſhall not enter nor have Action before Admittance, *unleſs there be a ſpecial Cuſtom for it.* But till his Admittance the Surrenderor may have Action of Treſpaſs againſt any who enters. Cro. E. 349. pl. 25. Mich. 36 & 37 Eliz. B. R. Berry v. Green. Gilb. Treat. of Ten. 273. cites S. C. — Supplement to Co. Comp. Cop. 72. S. 6. S. P. as to the Entry cites S. C.

10. A Surrender of a Copyhold was *to A. & tribus Aſſignatis ſuis*; by the Death of A. the Eſtate in the Copyhold was determined, and he to whom the Surrender was intended had nothing in Intereſt, nor otherwiſe by Courſe of the Law before Admittance. Yelv. 16. Mich. 44 & 45 Eliz. B. R. in a Nota there, at the End of the Caſe of Arnold v. George.

11. If

11. If a Copyholder will *ſurrender to the Uſe of the Lord*, the Intereſt of the Copyhold is ſufficiently veſted in the Lord immediately upon the Surrender, without any Admittance of the Lord, becauſe the Lord cannot admit himſelf. Co. Comp. Cop. 51. S. 38.

12. If the Lord will make a *voluntary Grant of a Copyhold* no Surrender is requiſite, for by the Admittance of the Lord according to the Cuſtom the Copyholder is ſufficiently ſettled in his Land without any other Ceremony. Co. Comp. Cop. 51. S. 38.

13. If a Copyholder will *ſurrender in Court to the Uſe of a Stranger*, beſides the Surrender the Admittance is requiſite; and if the Surrender be made *out of Court into the Hands of the Lord himſelf*, which the general Cuſtom will warrant, or into the Hands of the Bailiff, or two Tenants of the Manor which by ſpecial Cuſtom only is warrantable; beſides a Surrender, two other Ceremonies are requiſite, the one a true Preſentment of the Surrender in Court by the ſame Perſons into whoſe Hands the Surrender was made, the other is an Admittance of the Lord according to the Effect and Tenor both of the Surrender and Preſentment. Co. Comp. Cop 51. S. 38.

14. If the *Eſtate of the Lord determines after the Surrender* of a Copyhold, *before an Admittance*, yet the Surrenderee ſhall be admitted; So if a Man *ſurrenders to the Uſe of his laſt Will out of Court* according to the Cuſtom, *and dies before Preſentment*, yet at the next Court the Deviſee ought to be admitted. Co. Litt. 59. b.

Nov 29. Hill. 15 Jac. C. B. Rennington and Cole. S. P. adjudged.

15. If a *Woman intitled to Frank-Bank* comes into Court, and *prays her Widow's Eſtate, and ſhe is denied* the ſame, Warburton and Hutton thought *the Law would ſupply the Admittance* which was refus'd to be made to her on her Prayer. Hob. 181. pl. 218. in Caſe of Howard v. Bartlet.

16. The *Lord may avow upon the Heir for Rents and Services before Admittance*, but he is not compleat Tenant before Admittance, for he cannot maintain a Plaint in Nature of an Aſſiſe before Admittance, but it ſeems he may have Aſſiſe of Mortdanceſtor upon his Anceſtor's Admittance. Gilb. Treat. of Ten. 271.

S. P. But if a Copyholder having Iſſue two Daughters, and they are

17. Two *Jointenants*, the *one dieth*, the other ſhall have all by Survivor, without paying a Fine, or being admitted. Gilb. Treat. of Ten. 316.

admitted, and then the one of them dies, the other muſt needs be admitted for the other Moiety, for ſhe takes the ſame by Deſcent. Calth. Reading. 64.

18. It was ruled by Holt Ch. J. at Brentwood Summer Aſſizes, 10 Will. 3. upon Evidence at Niſi Prius, that if *Copyhold* Land be *ſurrendered to the Uſe of a Will* &c. and afterwards *the Will deviſes this Land to B. and his Heirs, upon Condition that he pay* 100 l. *within* 6 *Months* after the Death of the Deviſor to J. S. *if the Money is not paid, J. S. ought to be admitted*, then he *muſt make an actual Entry before he can ſurrender*; and therefore in the preſent Caſe, a Surrender made by J. S. before actual Entry was held ill. Ld. Raym. Rep. 726. Clerke v. How.

19. A Copyholder makes a *Surrender in Court into the Hands of the Lord*, and the *Lord doth aſſeſs a Fine*, this is no Admittance by Implication. *This ſurrender was to the Uſe of himſelf for Life*, then *to his Wife for Life*, and then *to them in Tail*, Remainder *to the Heirs of his Body* &c. no expreſs Admittance was made. The *Wife enjoys her Widow's Eſtate by the Cuſtom* &c. The *eldeſt Son and Heir of the Body of the Surrenderor is admitted generally as Heir, but not as to the Eſtate Tail*; then *he makes a Mortgage and dies, leaving Iſſue, who is admitted*, and the *Mortgagee recover'd in Ejectment*, for the Son was admitted to the Fee-ſimple, for the Eſtate in Fee and ſame Right remain'd in him till Admittance upon

the

the Surrender, for this *Fee-ſimple deſcended upon the Death of the Father to him, as his eldeſt Son and Heir; but had the eldeſt Son and Heir been admitted to the Eſtate Tail, he could not have made the Mortgage.* Hill. 5 Ann. B. R.

(H. b) Where the Lord may inforce a Mortgage-Surrenderee to be admitted.

1. *Mortgage ſurrender* to ſecure 700 l. at 6 Month's end was made into the Hands of the Lord. The Money not being paid the Mortgagee and Mortgagor were both willing the Money ſhould lie, and deſired the Lord that the Surrender ſhould be taken up, and a new one made for 6 Month's longer; but he inſiſted, that the Mortgagee ſhould come in and be admitted, and *refuſed to accept a new Surrender*, and called Courts, and made Proclamations; but before the third Proclamation the Copyholder brought a Bill againſt the Lord, but the Court would not decree, but to try at Law what the Cuſtom was. 2 Vern. 368. pl. 330. Mich. 1699. Tredway v. Fotherley.

(I. b) In what Caſes a New Admittance muſt be.

1. IF a *Copyholder* be *for Years*, and *makes his Executor, and dies*, the Executor ſhall have the Term, and that without any new Admittance; Per Brown and Dyer Juſtices, but Weſton e contra. 3 Le. 9. pl. 22. 7 Eliz. C. B. in Dedicot's Caſe. Gilb. Treat. of Ten. 273 cites S. C. but ſays, that the Opinion ſeems reaſonable; For, they continue the Poſſeſſion of the Teſtator, and have it only to his Uſe.

2. Copyholder ſurrendered to the Uſe *of A. for Life*. A. is admitted and dies; *he in Reverſion* may enter without a new Admittance; Per Wray. Le. 175. pl. 244. Hill. 31 Eliz. B. R. in Caſe of Bullen v. Grant. Cro. E. 148. pl. 17. S. C. and S. P. held accordingly. ——Gilb. Treat. of Ten. 151. cites S. C. but adds a Quære.

3. Where *the Lord is to have a Fine* there muſt be a new Admittance. Mo. 465. pl. 658. Paſch. 39 Eliz. B. R. Tipling v. Bunning. Cro. E. 504. pl. 29. Gipping v. Bunning S. C. —— Gouldsb. 95. pl. 9. Kipping's Caſe S. C but S. P. does not clearly appear in either of the ſaid Books.

4. If a *Surrender* of a Copyhold be made *to the Uſe of a Stranger for Life*, and the Lord makes a *Grant thereof to the ſame Stranger in Fee*, this ſhall not bind the *Heir of the Tenant*, but that he *may enter after the Death of the Grantee*, for he took the Land by the Surrender, and not by the Grant made by the Lord, for the Lord is but an Inſtrument of the Conveyance of the Land; for if I make a *Surrender unto the Lord ea Intentione that he ſhall grant over unto ſuch a Man*, if the *Lord will not grant* the ſame, *I may then re-enter*, but the Stranger has no Means to enforce the Lord to grant the ſame over unto him, but he may maintain Treſpaſs againſt the Lord, if he doth ſuffer me to re-enter, and this is the Opinion at this Day. Calth. Reading. 61.

This was a Releaſe in Court by a Feme Covert, who was examined by the Steward privately. Ibid.

5. In Caſe of a *Releaſe* to a Tenant in Poſſeſſion by *wrongful Title*, there needs no new Grand or Admittance of the Ld. and if the right Tenant had been admitted, the other had been out; Per Cur. 2 Show. 83. pl. 70. Mich. 31 Car. 2. B. R. Stone v. Exton.

Calthrop's Reading 60, 61. S. P.

6. A Copyholder may ſurrender to the Uſe of another *upon Condition, that if the Surrenderor pay ſuch a Sum* of Money at *ſuch a Day the Surrender to be void; after the Admittance of ſuch Surrenderee, if the Surrenderor pay the Money, he may re-enter*, and ſhall have the Land without any new Admittance, or any new Fine, for he is in of his old Eſtate; ſo he may ſurrender, reſerving Rent, and that if the Rent be not paid, he may re-enter, and there no Fine or Admittance is to be had; but in Caſe where the Day of Payment of Money by the Surrenderor is paſt, ſo that he hath only an Equity of Redemption, there it ſeems he muſt pay a Fine, and be re-admitted. Gilb. Treat. of Ten. 259, 260.

This in Roll is Letter (T) in Fol. 504.

[I. b. 2] *What Thing* may *paſs* by Admittance. [Or rather, How much ſhall be ſaid to paſs by the Surrender and the Effect of an Admittance, though on a void Preſentment.]

Ibid. The Report ſays that thoſe General Words of Per Nomen of all his Lands &c. were not really in the Note of the Surrender taken by the Steward, and whether more than is particularly mentioned in the Surrender ſhould paſs by its being ſo preſented and enroll'd was much debated in ſeveral Courts for 24 Years; Dyer held, that no more ſhould paſs than the Surrender expreſs'd particularly, and a Decree was made accordingly by the Lord Wentworth, Lord and Chancellor of the ſaid Manor, Unde poſtea ſe pœnituit. But nevertheleſs, diverſe others agreed to the ſaid Opinion for Law. ——Ibid. Winter v. Jeringham.———S. C. cited Gilb. Treat. of Ten. 238. 239.

1. D. 8 El. 251. [b. pl.] 92. **Barnwell** covenants to aſſure all his Copyhold Lands **to A. and after he** ſurrenders **out of Court, according to the Cuſtom,** divers Parcels by particular Name, **the** Surrender is enrolled accordingly, with a Concluſion, by the Name of all his Copyhold Lands there, **Per Dier, and alios, no more ſhall paſs by it than what was named in the Surrender.**

2. Co. 4. **Kite and Quinton** 25. **A Man is** admitted upon a void Preſentment, yet **reſolved, that he hath a cuſtomary Eſtate in Poſſeſſion, and** is in by Title, and capable of a Releaſe **from him that hath the Right.**

2 Roll Rep. 327. S. C. but S. P. does not appear.

3. Several Copyhold Lands were appertaining to a Meſſuage, which *Meſſuage, cum Pertinentiis*, were ſurrendred to the Lord, and the Surrenderee was admitted; all the Court held that it is all one in Caſe of Copyhold and Freehold, and that *only the Meſſuage, Curtilage, Orchards, and Yards, and Garden paſſed* by this Surrender. Cro. J. 526. pl. 2. Paſch. 17 Jac. B. R. Smithſon v. Cage.

[I. b. 3] Copyhold.
Admittance upon a Surrender.
By whom it may be.

This in Roll is Letter (P) in Fol. 503.

1. ADmittances made by Diſſeiſors, Abators, Intruders, Tenants at Sufferance, or others that have defeaſible Titles, **are good againſt thoſe that have Right, becauſe this was a lawful Act, and they were** compellable **to do it. Co. Lit.** 58. b. 4 Rep. 24. a. pl. 9. Paſch. 29 Eliz. B. R. in Caſe of Rous v. Artois.

—— Mo. 236. pl. 369. S C and S. P. adjudg'd, and ſo if the Heir before Aſſignment of Dower grants and admits to a Copyhold upon a Surrender thereof, he is only in ſuch Caſe an Inſtrument of Conveyance by the Surrender, and does not depart with any Intereſt; Agreed by all the Juſtices. —— 2 Le. 45. pl. 59. S. C —— 1 Rep. 140 b. S. P. accordingly by the Reporter in a Nota at the End of Chudleigh's Caſe. —— S. P. Arg. 3 Bulſt. 215. cites 4 Rep 24. in Caſe of Clarke v. Pennyfeather. —— Mo. 112. S. P. per Cur. —— If a Manor be deviſed to one, and the Deviſee enters and makes Copies, and then the Deviſe is found void, yet the Copies upon Surrenders made by ſuch Deviſee are good; per Popham. Ow. 28. cites 7 Eliz.

2. **If the** Diſſeiſor of a Manor accepts a Surrender of a Copyholder **of Inheritance,** to the Uſe of another and his Heirs, and he admits Ceſtuy que Uſe accordingly, **this is good, and ſhall bind the Diſſeiſee. P.** 40 **El. B. R. between** *Martin* **and** *Rewe.* **per Popham. Co.** 4. 24.

3. **If a** Copyholder of Inheritance ſurrenders to the Diſſeiſor of the Manor, ut Dominus inde faciat Voluntatem ſuam, **and the** Diſſeiſor at the ſame Court regrants it to the Copyholder in Tail, with a Remainder in Fee, **or in other Manner,** according to the Intention **of the Surrender, it ſeems this ſhall bind the Diſſeiſee; But quære.**

4. **If a** Copyholder for Life, or in Tail, ſurrenders to the Diſſeiſor of the Manor, to the Uſe of another for Life, or in Tail, **this ſhall not bind the Diſſeiſee. P.** 40 **El. B. R. in Martin's Caſe.**

5. But if A **Copyholder for Life ſurrenders to the Diſſeiſor of the Manor,** to the Uſe of another for Life of A. **and the Diſſeiſor admits him accordingly, this ſhall bind the Diſſeiſee. Ibidem.** S. P. 4 Rep. 24. a. pl. 7.

6. **If a Copyholder of the Inheritance dies, and this deſcends to his Heirs, a** Tenant at Sufferance of the Manor, **though he hath no lawful Eſtate,** may admit the Heir, **and this ſhall bind him that hath Right. Co.** 4. 24. 58. b. 4 Rep. 24. a. pl. 7. Trin. 26 Eliz. B. R. in Caſe of Clerke v. Pennyfeather

S. P. for ſuch Acts are within the Cuſtom and lawful, et quodam Modo Judicial, and to do which he may be compell'd in a Court of Equity, and therefore ſhall bind him, that has the Right.

7. **If the Lord pro Tempore of a Copyhold Manor be** Leſſee for Life, or **for** Years, Guardian, or other that hath a particular Intereſt, or Tenant at Will of a Manor, **and** accepts a Surrender, and **after** before Admittance the **Leſſee for Life dies, or the Years,** Intereſt, **or Cuſtody** is ended **or determined, or the Will be determined, though the next Lord comes in paramount the Leaſe for Life or Years, Cuſtody, or other particular Intereſt or Tenancy at Will, yet he ſhall be compelled to make Admittances according to the Surrender.** 17 **Ja. in the Lord** * *Arundel's* **Caſe held, cited Co. Lit.** 59. b. **Tr.** 1 **Ja. Rot.** 854. **between** † *Shopland* **and** *Ridler*, **in the Caſe of a Guardian in Soccage adjudged.** * See (G) pl. 8. S. C. and the Notes there. † See (G.) pl. 4 S. C. and the Notes there.

This in Roll is Letter (S.) in fol. 504. See (Q. b)

[K. b] What *Admittance* ſhall be *good*, and *by whom* & e contra. And at what *Time*.

See (W. a) pl. 1. S. C. ——Supplement to Co. Comp. Cop. 80. S 15. cites S. C. that the Surrenderee being dead the Ld. admitted his Heir, but the Preſentment of the Surrender being (as of an Abſolute, and not as of a Conditional Surrender) without taking Notice of the Condition, it was reſolv'd to be void ; But if the Conditional Surrender had been preſented it had been good, tho' it was entered on the Roll.

1. Co. 4. Kite and Quinton 25. it is put, That if a Conditional Surrender be preſented &c.

Adjudged Ibid. Hauchett's Caſe

2. D. 8 El. 251. [a. pl.] 90. A Copyhold is ſurrendered to the Lord, ad Intentionem that he ſhall grant it to him for Life, with a Remainder over, if the Party that ſurrenders die before Execution thereof had, yet the Grant of the Remainder after by the Lord is good.

3. Co. 4. Kite and Quinton 25. A Copyholder ſurrenders to the Uſe of J. S. in Fee ; J. S. dies before Admittance, and it is admitted, that his Heir was well admitted after his Death, and the Lord Coke cited the Caſe, 29. b. That his Heir ſhall be admitted.

(L. b) Admittance. How it may be.

Cro. J. 434 pl. 1. Brooks v. Brooks S. C. Adjudg'd ; and it is ſaid there that in many Manors there are no other Forms of Grant or Limitation.

1. B. A. Copyholder in Fee ſurrendered to the Ld. by whom *B. was admitted, habendum to him and his Wife in Tail, Remainder over* ; It was agreed per Cur. that this Admittance was good to the Wife, tho' ſhe was only named in the Habendum, and not in the Premiſſes, tho' it be otherwiſe in Caſe of Feoffment and Crant ; But this Caſe of Copyhold is like the Caſe of a Will, or of frank Marriage, which will paſs the Eſtate, tho' the Party is *only nam'd in the Habendum* ; and Judgment accordingly. Poph. 125, 126. Trin. 15 Jac. B. R. Brook's Caſe.

——Supplement to Co. Comp. Cop. 71. S. 6 cites S. C.—Ld. Raym. Rep. 626. Hill. 12 W. 3. Holt Ch. J. cited the Caſe of Brookes in Poph. 125. and the ſaying of Popham, that the Caſe of a Copyhold reſembles the Caſe of a Will, but ſays the Report of Cro. J. 434 makes no Mention of any ſuch Thing, and that the ſaid Part of Poph. Rep. being reported by an uncertain Author ought not to be regarded.——But in Cro. Car. 366. 1. Jones 342. Seagood v. Hone, where a Copyholder ſurrendred to the Uſe of A. and B. and the Survivor ofthem, and for want of Iſſue of the Body of B. Remainder to J. S. and his Heirs ; it was held, that B had only an Eſtate for Life ; for an Eſtate for Life being limited to him by expreſs Limitation, he ſhall have no higher Eſtate by Implication, and tho' perhaps it might have been enlarged by Implication in a Deviſe, yet it ſhall not be ſo in a Surrender or Conveyance, which ſhews the Difference between a Surrender of a Copyhold and a Will, and that the Surrender is like any other Conveyance at Common Law. Ld. Raym. Rep. 630. Hill 12 W. 3. per Holt Ch. J. ——Gilb. Treat. of Ten. 239. cites Poph. and Cro. J. and ſays, that the ſubſequent Admittance explains to what Uſe the Surrender was made ——Gilb Treat. of Ten 243. ſays, that ſince the Judges thought that the Baron did not take before the Habendum any more than the Wife, and that this Caſe does not fully prove, that a Perſon may take that is named after the Habendum when there is another only named in the Premiſſes, for when both are named in the Habendum only, the Admittance would be to no Purpoſe, if both could not take ; and perhaps at Common Law, if there be no Body named in the Premiſſes, Habendum to 2, they ſhall both take, elſe the Deed could have no Effect but an Admittanee to one Habendum to him and another, may be good ; ſed quære.

[M. b] [*Admittance.*] *How.* [*And in what Caſes*] *by* Letter of *Attorney.*

This in Roll is Letter (U.)

Fol. 505

1. THE Ld. may refuſe to admit by Attorney **Ceſtuy a que uſe a Surrender of a Copyhold is made, becauſe he ought to do** Fealty, **which** cannot be done by Attorney. **Co. 9. Com.** *Combs's Caſe.* 76. Gilb. Treat. of Ten. 202. 203. S. P.— Ibid. 269. S. P. ——

A Copyholder may take an Eſtate in the Copyhold by the Surrender of another Copyholder into the Hands of 2 Tenants of the Manor by Cuſtom, but then this Surrender muſt be preſented in Court, and he to whoſe Uſe the Surrender was made muſt perſonally appear in Court, and there be admitted to the Land; and he cannot be admitted by Attorney Supplement to Co. Comp. Cop. 83. S. 18. —— Copyholder ought not to be admitted by Letter of Attorney, for he ought to *do Fealty* at the Time of his Admittance, *which can't be done by Attorney* 2. Chan. Rep. 56 21 Car. 2. Floyer v. Hedgingham.

2. [But] If the Ld. will admit **him** by Attorney it is good. **Co. 9. Combe** 76. Gilb. Treat. of Ten. 236. S. P. Admittance by the Ld. in Court and out of Court ſeems to be de Communi Jure, and therefore it may be done by Attorney.

3. A Copyholder of the Manor of the Earl of Arundell did *ſurrender* his Cuſtomary Lands *to the Uſe of his laſt Will, and* thereby *deviſed the Lands to his youngeſt Son and his Heirs*, and died; the *Youngeſt being in Priſon makes a Letter of Attorney to one to be admitted* to the Land in the Ld's Court in his room, *and alſo after Admittance to ſurrender the ſame to the Uſe of B. and his Heirs to whom he had ſold it for the Payment of his Debts*, and Wray was of Opinion, that it was a good Surrender by Attorney, but Gawdy and Clench contrary; and by Gawdy, if he who ought to ſurrender cannot come in Court to ſurrender in Perſon, *the Ld.* of the Manor *may appoint a ſpecial Steward to go to the Priſon and take a Surrender* &c. Le. 36 pl. 45. Trin. 28 Eliz. B. R. Anon. Supplement to Co. Comp. Cop. 83. S 18. cites S.C. and that he ſhould have procured the Ld. to appoint his Steward to have gone to the Priſon to him to have been admitted, and afterwards to have Surrendred the Lands.

4. What *Perſons* ſoever are *capable of a Grant by* Copy *may well take by Attorney, not that the Lord ſhall be enforced to admit any one by Attorney*, becauſe upon every Admittance there is Fealty due by the Party admitted, which is a Duty ſo inſeparably annexed to the Perſons, that it cannot be deſcharged by Deputy, and therefore no reaſon the Ld. ſhould be inforced to admit by Attorney; but if he will admit him it ſtands good. Co. Comp. Cop. 49. S. 35.

5. C. Surrender'd *to the Uſe of J. S. and his Heirs upon Condition that if C. pay* 800 *l. ſuch a Day the ſurrender to be void. J. S. died before the Day without being admitted, his Heir being then beyond Sea. A Neighbour* came and *was admitted in the Name of the Heir.* This *Heir return'd and conſented* to the Admittance by bringing an Action againſt another, and Judgment for the Plaintiff; for this is a good Admittance. 2 Sid. 61. 62. Hill. 1657. B. R. Blunt v. Clark. Gilb. Treat. of Ten 268, 269, cites S. C;

[N. b] Admittance. At what Place it may be.

This in Roll 1. Letter (U) is pl. 3.

1. THE Lord **of the Manor** may make Admittances out of **Court, and out of** the Manor **alſo. Co. Lit.** 60. b.

—— S. P. reſolved, 4 Rep. 26. b. the laſt Reſolution in pl. 12. Trin. 30 Eliz. B. R. Melwich v. Luter. —— Gilb. Treat. of Ten. 203. cites S. C. —— Ibid. 301. cites S. C. and ſays, that this ſeems to imply, that the Lord may make by Copy Grants and Admittances at a Court held off the Manor, or elſe, where is the Difference between the Caſe of the Lord and Steward; and in the next Caſe but one it is reſolved, that if the Steward at a Court held off the Manor make any Grants or Admittances, they are all void, but he ſays nothing of the Lord; In his Comment. upon Littleton he ſays the Court Baron muſt be held upon the Manor, elſe it would be void. —— S. P. agreed by Crooke, Haughton, and Doderidge. Bridgm. 52. Mich. 14 Jac.

This in Roll Letter (U) is pl. 4. —— Cro. J. 403. pl. 1. S. C.

2. **The** Steward **of a Manor** may admit **upon a Surrender** out of Court **as well as in Court. Mich. 14 Ja. B. R. between** *Froſwell and Welſh*, **per Curiam. Contra Co.** 4. 26, 27.

3 Bulſt. 214. Roſewell v. Welch, S. C. —— Roll Rep. 415. pl. 3. S. C. —— Bridgm. 49. Froſett v. Walſhe, S. C. —— 3 Bulſt 214. S. C. but I do not obſerve the ſame Point in any of thoſe Reports. —— The admitting a Copyholder *is not any judicial Act*; for there needs not be any of the Suitors there who are Judges; and *ſuch a Court may be holden out of the Precinct of the Manor, for no Pleas are holden*; Quod fuit Conceſſum per tot. Cur. Le. 289. pl. 394. Trin. 26 Eliz. B. R. in Ld. Dacres's Caſe.

* See the Notes at pl. 1. ſupra.

Supplement to Co. Comp. Cop. 69. cites S. C.

3. If the *Under-Steward holds a Court Baron, and grants cuſtomary Land by Copy* of Court Roll, *without Authority of the Lord or High-Steward*, this is a good Grant. Br. Tenant per Copy. pl. 26. cites H. 2 E. 6.

4. *Contra* if he does it *out of Court without ſuch Authority*. Ibid.

5. *But* the *High-Steward may admit by Copy out of Court*, by ſome; *Quære* inde; if he has not ſpecial Authority from the Lord to demiſe. Ibid.

But Gawdy J. doubted thereof, and conceived it had been well enough if it had been *ſo uſed Time out of Mind*.

6. A. *had two Manors and granted a Copyhold of one at the Court of the other* Manor. It was adjudged a void Grant; for it cannot be a Copyhold according to the Cuſtom of a Manor whereof it is not Parcel; cited per Popham Ch. J. Cro. E. 814. to have been adjudged in Qu. Mary's Time, in Caſe of the D. of Suffolk. Ibid.

7. A Copyhold granted *at a Court held out of the Manor* was *confirm'd* againſt the Lord that made it. Toth. 107. 25 Eliz. Marke v. Suliard.

8. *Admittance of a Copyholder* is not any judicial Act for there need not be any of the Suitors there who are the Judges and a *Court may be held out of the Precincts of the Manor* for no Pleas are holden. Le. 289. pl. 394. Trin. 26 Eliz. B. R. in Lord Dacres's Caſe.

Ibid. ſays, that agreeable to this is the 4th Reſolution in Melwich's Caſe. [4 Rep. 26. b. pl. 12.]

9. If the *Steward* of a Manor *holds a Court out of it, all the Grants and Admittances there made are void*; for the Court of the Manor ought to be held within the Manor; Reſolv'd per tot Cur. 4 Rep. 27. a. pl. 14. Mich. 27 & 28 Eliz. B. R. Cliſton v. Molineux. —— Gilb. Tteat of Ten. 203. cites S. C.

10. *But*

10. *But* resolv'd that *by Custom the Court may be held out of the Manor*, and that Grants and Admittances made there are well enough; As divers Abbots, Priors &c. used to hold Courts in one Manor for diverse several Manors, and good by Custom. 4 Rep. 27. a. pl. 14. Mich. 27 & 28 Eliz. B. R. Clifton v. Molineux.

Gilb. Treat. of Ten. 203. cites S. C. — S. P. per Cur. Cro. C. 367. at the End of pl. 4. Trin. 10 Car. B. R.

11. In Case of a *customary Manor where the Copyhold Tenements are divided from the Residue of the Manor*, the Lord or his Steward may grant Copies out of Court as well as in Court; Per Cur. Cro. E. 103. pl. 10. Trin. 30 Eliz. B. R. in Case of Melwich v. Luter.

Gilb. Treat. of Ten. 203. cites S C. & S. P. but says Quære. —— It is held, that *if the Inheritance of Copyholds be granted to one*, he may hold Courts where he will, for it is no longer a Court Baron, and that the Lord or his Steward may grant Copies out of Court as well as in Court, and as the Case is reported by Croke, the Grant was at a Court held at another Manor; but at Coke reports it, though the Grant be at another Place, yet it is not said to be done at a Court; so quære, whether a Steward may make Grants by Copy out of Court; but *if a Steward can, an Under-Steward cannot.* Gilb. Treat. of Ten. 235, 236.

12. The *Lord himself may* make a Grant or Admittance of a Copyhold *out of the Manor at what Place he pleases*, but the *Steward cannot* do it *at any Court holden out of the Manor.* 4 Rep. 26. b. pl. 12. 30 Eliz. the 4th Resolution, in Case of Melwich v. Luter.

Cro. E 102. pl. 10. S. C. —— As Melwich's Case is reported by Croke, it is there said, that *if the Lord grants away the Freehold of his Copyholds*, the *Grantee may hold Courts where he will to make Admittances and Grants*; if then a Grant by Copy or Admittance should be made at a Court held off the Manor, though it be a Court Baron, why should it be void? Since a *Court Baron contains in it two Courts, one for the Freeholders, the other for the Copyholders, and since that for the Copyholders, as to granting Copies, &c. may be held off the Manor, there is no Reason, that because the Court Baron is void, that therefore the Admittance should, for they are as two distinct Courts, and the Admittance had been good, had the Court been only the Copyholder's Court*; and if we look back to the Reason of the Thing, if an Admittance may be made at a Place off the Manor, why not at a Court held off the Manor, for *it is no judicial Act*; if it were, surely it must of Necessity be done in Court, and therefore it was held per tot Cur. that a Court to do these Things might be held off the Manor; It is not distinguished in this Case between the Grant of the Lord or Steward, but Coke is expres, that Grants by Stewards at Courts held off the Manor are void. Ideo quære de hoc, Gilb. Treat. of Ten. 302, 303.

13. A *Lord may* make a Grant or Admittance of a Copyhold *out of the Manor* at what Place he pleases, but the *Steward cannot*, at a Court held of the Manor, make any Grants or Admittances; and in Coke's 1st Inst. 58. a. he says, that a Court-Baron cannot be held off the Manor, unless the Lord hath 2 or 3 Manors, and hath usually kept Court at one for all; which plainly shews, that a *Lord cannot make Admittances or Grants at a Court held off the Manor*, no more than the Steward; For Coke says, that if the Court-Baron be held off the Manor, it is void, and he there speaks of a Court-Baron as including the Copyholder's Court, where the Steward is Judge; *but*, as hath been said before, a *Lord may make Admittances or Grants out of the Manor at what Place he pleases* which are Coke's Words, and must be understood not at Court but at some other Time or else he contradicts himself. Gilb. Treat. of Ten. 235.

14. If the *Under-Steward* make *Admittances* it is good, but if it be *out of Court* it ought to be by a special Custom. Arg. 4 Le. 244. pl. 397. Pasch. 8 Jac. C. B. in Case of E. Rutland v. Spencer.

15. The *Honour* of Hampton *had many Manors within it*, as O. P. Q. &c. J. S. was a Copyholder of the Manor of P. and surrendered into the Hands of two Tenants of the Manor of P. according to the Custom of that Manor, to the Use of W. S. his Son, and died. The Surrender was presented at the next Court, and the Stile of the Court, and recital of this Surrender in the Copy made out was thus, *At the Court Baron of the*

the Honour of Hampton J. D. and J. N. Tenants of the Honour of Hampton, do preſent that J. S. did ſurrender into the Hands of the two Tenants of the Honour &c. Per 3 Juſtices againſt Jones J. this is good enough; for *P. being in the Margin* it ſhall be ſaid a diſtinct Court of itſelf; for an Honour conſiſts of many Manors, yet all the Courts for the Manors are *diſtinct*, and have ſeveral Copyholders, and although there is for all the Manors but one Court, they are Quaſi ſeveral and diſtinct Courts. And it was uſual, in Time of the Abbeys, to *keep but one Court for many Manors.* Cro. C. 366. pl. 4. Trin. 10 Car. B. R. Seagood v. Hone.

16. J. S. was ſeiſed of the Manors of A. and B. and about 20 Years ſince ſold A. to W. R. and now W. R. brought a Bill againſt a Copyhold Tenant of A. for a Rent of 8 s. payable out of a Copyhold held of the the Manor of B. and though it appeared from the Manor-Rolls of B. from H. 8. to Car. 1. that the Copyhold was held of the Manor of B. and though it was admitted by the Plaintiff that the *Copyhold* was *held of the Manor of B. and not of the Manor of A.* and Plaintiff had no other *Evidence of Title to the Rent* but that it *had been paid near* 20 *Years*, yet the Court decreed him the Arrears, and growing Rent, and deny'd Defendant a Trial at Law; and per Wright K. after ſo long Payment of 20 Years a Grant of the Freehold of the Copyhold from the Lord of the Manor of B. ſhall be *preſumed.* 2 Vern. R. 516, 517. pl. 465. Mich. 1705. Steward v. Bridger.

(O. b) Admittance. Good. In reſpect of the Eſtate granted.

4 Rep. 29. S. C. but not S. P.

1. COpyholder *bargained and ſold* his Copyhold, *but ſhewed not what Eſtate*, and ſurrendered it to the Uſe of the Bargainee, and the Lord granted it to the Bargainee in Fee; it was *good*, and the Bargainee ſhall retain it in Fee; ſaid it had been ſo adjudged in Lippingwell v. Bunting, and of that Opinion was the whole Court in this Caſe, that a Cuſtom was good and allowable (being uſed) that when the Tenant doth not appoint the Eſtate of Ceſty que Uſe that the Lord may; the Intereſt of the Land being between the Lord and the Copyholder it is not unreaſonable that upon ſuch *uncertainty* it may be *aſcertained by the Lord.* Cro. E. 392. pl. 15. Paſch. 37 Eliz. C. B. Brown v. Forſter.

This in Roll is Letter (Y) in fol. 505.

[P. b] In what Caſes the *Admittance one ſhall be of the other.*

* 4 Rep. 23. a. pl. 6. Fitch v. Huckley. S. P but it is not the Admittance of him in Remainder

1. IF a Copyholder Surrenders to the Uſe of one for Life, the Remainder to another, the Admittance of the Tenant for Life is an Admittance for him in Remainder alſo, becauſe they are but one Eſtate, and but one Fine is due for both, and if there ought to be an Admittance of him in Remainder alſo, this would be void, becauſe nothing paſſed before Admittance, and ſo the particular Eſtate would be determined before the Remainder could commence. Co.

Co. 4. 22 & 23. * *Fitche's* Caſe adjudged. Mich. 38 & 39 Eliz. B. R. between † *Keping and Bunning*, dubitatur. ſo as to prejudice the Lord of his Fine which was due by the Cuſtom of the Manor according to the Opinion in Brown's Caſe. [4 Rep. 22. b.]——Cro. E. 441. pl. 4. S. C. but S. P. does not appear.

† See (E. b) pl. 1. and the Notes there.

2. A. *Surrendered to his Wife during the Nonage of his Son*, and then to his Son in Tail &c. and died; The Wife is admitted accordingly, Marries, and dies. The Heir at her Admittance was *but five Years old.* The ſecond Husband ſhall have the Land during the Nonage of the Infant, for the Wife had her ſaid Eſtate to her own Uſe, and then her Husband ſurviving her ſhall take, and that without any Admittance, for that he is not in of any new Eſtate but in the Eſtate of his Wife as Aſſignee, but if ſhe had been only Guardian or Prochein Amy it had been otherwiſe. 3 Le. 9. pl. 22. 7 Eliz. C. B. Dedicot's Caſe. D. 251. a. pl. 90. Hill. 8 Eliz. S. P. and ſeems to be S. C. ——S. C. cited by Vaughan Ch. J. Vaugh. 185. accordingly. ——Gilb. Treat of Ten. 272. cites S. C. held accordingly by 2 Juſtices. ——Ibib. 316. cites S. C.

3. Admittance of *Tenant for Life* is Admittance of him *in Remainder*, becauſe the Fine is intire, and no new Fine due for Remainder-man; But otherwiſe it is of him *in Reverſion.* Mo. 358. pl. 488. Trin. 36 Eliz. Dell v. Higden. 4 Rep. 23. a. pl. 3. Deal v. Rigden S. C. but S. P. does not appear.——Cro. E. 372. pl. 17. S. C. but S. P. does not appear.——Supplement to Co. Comp. Cop. 72 S. 7. cites S. C. and S. P.——S. C. cited 3 Lev. 308, 309.——4 Rep. 22. b. in Brown's Caſe S. P. reſolved.——Ibid. 23. a. pl. S. P. in Caſe of Fitch v. Huckley.——2 Brownl. 301. Paſch. 7 Jac. C. B. Warren v. Packman S. P. reſolved.——S. P. adjudg'd; For *where the Lord is to have a Fine* there muſt be a new Admittance. Mo 465. pl. 658. Paſch. 39 Eliz. B. R. Tipping v. Bunning.——Cro. E. 504 pl. 29. Gyppyn v. Bunney, S. C. and by Popham the Tenant for Life, and he in Remainder have but one Eſtate in Law, and therefore the Admittance of the one ſhall ſerve for the other.——Goldsb. 95. pl. 9. S. C. and S. P. Arg.——Supplement to Co Comp. Cop. 72. S. 7. cites S. C. and S. P. as held accordingly.——The Caſe of Dell v. Higden, as it is reported by Moor, is alſo contrary to the Caſes before; for there it is ſaid but one Fine is due, but otherwiſe it is of a Reverſion, which Diſtinction is laid quite croſs to what it is in the Caſes before, and ſeems to have been a Miſtake in the Reporter; for as it is againſt the Caſes before, ſo it is againſt Reaſon. The ſame Caſe is reported by Lord Coke, and no ſuch Reſolution is mentioned in his Report of it, and it is obſervable, that nothing in that Caſe as reported by Moor, ſeems to have been either upon Reaſon or Authority, but one Point, which is the ſingle Reſolution, as the Caſe is reported by Lord Coke. Gilb. Treat. of Ten. 182.

4. Copyholder of Inheritance *ſurrendred to the Uſe of M. his Wife for Life*, Remainder *to C. his youngeſt Son in Fee.* The *Wife was admitted*, but the *Son refuſed during his Mother's Life*, and *afterwards, without being admitted, he ſurrendered to the Uſe of the Plaintiff, in the Life-time of his Mother.* Adjudged, that the Admittance of the Wife was the Admittance of the Son in Remainder, for ſhe being admitted to the particular Eſtate, the Remainder depends on that, and veſts without other Admittance; for both make but one Eſtate. Cro. J. 31. pl. 1. Trin. 2. Jac. B. R. Auncelme v. Auncelme. Supplement to Co. Comp. Cop. 72. S. 7. cites S. C. ——4 Rep. 22. b. Mich. 23 & 24 Eliz. C. B. the S. P. but that it ſhall not bar the Lord of his Office which he ought to have by the Cuſtom——S. P reſolv'd, 4. Rep. 23. a. pl. 6. Paſch. 36 Eliz. B. R. Fitch v. Huckley, but not to prejudice the Lord of his Fine due by the Cuſtom according to the Opinion in Brown's Caſe.——Supplement to Co. Comp. Cop. 72. S. 7. cites S. C.

5. If *he in Remainder makes a Leaſe for Years before his Admittance, the Admittance of the Termor* ſhall be good to this Purpoſe for him in Remainder; per Yelverton J. to which Fenner J. agreed. Bulſt. 42. Mich. 8. Jac. in Caſe of Eyliff v. Chopley.

2 Lev. 107. S. C. and S. P. adjudged accordingly. ——Mod 120. pl. 22, S. C. and Judgment accordingly. ——Vent 260. Batmor v. Graves S. C reſolved.

6. A Copyholder *ſurrenders to the Uſe of ſeveral Perſons for Years ſucceſſive*, the *Remainder in Fee to J. S.* Wyld held, that an Admittance of a particular Tenant is an Admittance of all the Remainders to all Purpoſes, but only the Lord's Fine; and if the Cuſtom be, that the Fine paid by the firſt Tenant ſhall go to all the Remainders, then the Admittance of the firſt Man is to all Intents and Porpoſes an Admittance of all that come after. In this Caſe the Poſſeſſion of the Leſſee is the Poſſeſſion of the Remainder-man. Mod. 102 pl. 8. Mich. 25 Car. 2. B. R. Blackburn v. Graves.

7. Surrender to *J. S. and his Heirs*, if J. S. dies his Heir is in without Admittance, per Hale Ch. J. who ſaid there had been diverſity of Opinions, but the better Opinion had been according to the Lord Cokes Opinion. Mod. 120. pl. 22. Paſch. 26 Car. B. R. in Caſe of Blackburn v. Graves.

8. *Surrender to A. for Life*, then *to his Wife for Life*, and the Survivor of them, and after their Death, then *to the Uſe of his laſt Will*, and for want of ſuch Will, then to his own right Heirs. *A. was admitted &c.* and made his Will, and deviſed all his Eſtate Real and Perſonal to his Wife, and after his Death, and *deviſed the Remainder* to be divided by G and H. (whom he made Executors) between his Relations, according to their Diſcretion. In Ejectment it was ſonnd that G. and H. entered with Intent to divide the Eſtate according to the Will, but were not admitted. The Queſtion was, what veſted in them before Admittance, and what paſſed by the Will. Held, that Admittance of Tenant for Life upon a Surrender is Admittance of thoſe in Remainder. 5 Mod. 306. Mich. 8 W. 3. Warſop v. Abell.

Co. Comp. Cop. 50. S. 35. S. P.

9. If a Copyholder *ſurrenders to the Uſe of his laſt Will*, and by that *deviſes it to* 2, and the *Lord admits one*, this ſhall enure to both, for when he is admitted, he is in by the Surrender, which he cannot be unleſs he be a Joint-tenant; for that is his Title by the Surrender. Gilb. Treat of Ten. 312, 313.

(Q. b) Admittance of whom it may be in Caſe of Death of Surrenderee before Admittance.

S. C. cited 4 Rep 29. b ——S. P. Brampton Ch. J. Mar. 139. at the Bottom. Mich. 17. Car. —— S. P. agreed for Law, it ſeems that he is in by Deſcent, [when he is admitted] or at leaſt by Force of the firſt Surrender, and ſo *in Nature of a Deſcent*. 2 Sid 61. cited by Glyn Ch. J. Hill. 1657. B. R. in Caſe of Blunt v. Clark. ——Gilb. Treat. of Ten 207. cites S. C. & S. P. for upon Admittance the Eſtate is in Ceſty que Uſe from the Surrender by relation.

1. A Surrenderee *to him and his Heirs* dies before Admittance, *his Heir may be admited*. 4 Rep. 25. a. pl. 11. Paſch. 31 Eliz. B. R. Kite v Queinton.

2. If a Copyholder according to the Cuſtom doth *ſurrender into the Hands of 2 Tenants to the Uſe of J. S. and his Heirs*, and afterwards the *Copyholder dieth before the Preſentment* be made of the Surrender by the Tenants, and the *Lord before the Preſentment accepts of the Rent of J. S. generally, but not as a Copyholder*, the Heir of the Surrenderor may enter into and upon the Lands, and receive the Profits thereof to his own Uſe, for that nothing veſteth in the Surrenderee before Admittance,

mittance, and the Inheritance of the Copyhold is in the Heir Quaſi by Deſcent. Supplement to Co. Comp, Cop. 79. S. 13.

3. *Cuſtom* was for a Copyhold *to deſcend to the youngeſt Son*, and not to the eldeſt Brother; A *Copyholder ſurrendred the Land to another and his Heirs but before Admittance*, *Surrenderee dies*, *leaving two Sons*, and the Queſtion was between the two Sons, and adjudged that the eldeſt Son ſhould be admitted, becauſe the Cuſtom was, that the Eſtate ſhould deſcend to the youngeſt Brother, and *there was no Eſtate in the Anceſtor to deſcend*; *and therefore the eldeſt Son muſt have taken as Purchaſer*; but according to the Report I have of the Caſe, the Court ſaid, that *if the Cuſtom had been laid to have been Borough Engliſh*, the eldeſt had been excluded, for the Law takes Notice of Borough Engliſh and Gavelkind Cuſtom. 6 Mod 121. cited by Holt Ch. J. as Hill. 1659. Fane v. Barr.

(R. b) Admittance. Where the Cuſtom is to deſcend to the youngeſt Son, or is Gavelkind &c.

1. A *Surrender* was *to the Uſe of J. S. and his Heirs* of Copyhold Land, deſcendible according to the Nature of Borough Engliſh. *J. S. died before Admittance*; The Court held, that *the Right would deſcend to the youngeſt* according to the Cuſtom. Mod. 102. pl. 8. cites it as the Caſe of Baker v. Dereham. Sty. 145. Mich. 24 Car. B. R. Barker v. Denham, S. C. but S. P. does not appear. —— Supplement to Co. Comp. Cop. 70. S. 4. cites S. C. but S. P. does not appear. —— S. P. by Glyn Ch. J. that the youngeſt Son ſhall have the Land, becauſe he is in by Deſcent, or at leaſt by Force of the firſt Surrender, and ſo in Nature of a Deſcent. 2 Sid. 61. Hill. 1657. Blunt v. Clerk. —— Vent. 261. S. P. by Wilde.

2. *Cuſtom* was for a Copyhold [*of every Tenant dying ſeiſed*, Wms's Rep. 66.] to *deſcend to the youngeſt Son*, and not to the eldeſt Brother. A Copyholder ſurrender'd to B. and his Heirs, but before Admittance B. dies, leaving *two Sons*. Adjudg'd that the eldeſt Son ſhould be admitted, becauſe the Cuſtom was, that the Eſtate ſhould deſcend to the Youngeſt, and there was no Eſtate in the Anceſtor to deſcend; cited per Holt Ch. J. as the Caſe of **Fane v. Barr.** 1659. But he ſaid, that according to the Report he had of the Caſe, the Court ſaid, that *if the Cuſtom had been laid to be Borough Engliſh* the eldeſt Son had been excluded, and the *youngeſt muſt have been admitted*; for the Law takes Notice of Borough Engliſh and Gavelkind Cuſtoms. 6 Mod. 121. Hill. 2. Ann. B. R. in Caſe of Clement v. Scudamore. Wms's Rep. 66. S. C. cited per Holt Ch. J. as adjudged in C. B. in Ld. Bridgman's Time, between Hale and ..... and adds, that the Law taking Notice of Borough Engliſh is the Reaſon why *in Pleading* that the Lands are Borough Engliſh, *you need not ſet forth the Nature of the Cuſtom ſpecially*. —— Wms's Rep. 66. Marg. ſays it ſeems to be S. C. as is cited 2 Keb 158, 159. by Name of Pain v. Herbert. —— Vent. 261. in Caſe of Batmore, alias, Blackmore, v. Graves, per Wild J. ſaid it was ſo held.

3. If the *eldeſt Son*, where there is Borough Engliſh, be *admitted*, *he is a Copyholder De Facto*, and he has a good Title againſt all Mankind but the youngeſt Son, and by Virtue of it may maintain an Ejectment. Trin. 5. Ann. Brown and Dyer. Holt's Rep. 165 S. C.

(S. b) How far the Lord is bound by Admittance.

1. SUrrender to the Uſe of A. *upon Truſt till Money paid*, and that after A. ſhall ſurrender to B. A. having received the Money refuſes to ſurrender to B. The Lord decrees a Surrender by A. to B. B. refuſes. The Lord may ſeize and admit B. for in ſuch Caſe *he is Chancellor* in his own Court; Per tot. Cur. Le. 2. pl. 2. Hill. 25. El. B. R. Anon.

2. *Baron and Feme Copyholders for Life*, the *Baron ſurrendered* to the Lord who granted the Land over by Copy to a Stranger; the Baron died; the Feme recovered and entered, and ſurrendered to the Lord; the Stranger ſhall have the Land, and not the Lord himſelf againſt his own Grant. 4 Le. 88. pl. 186. Paſch. 26 Eliz. B. R. Anon.

3. A Copyhold Cuſtom is, that a Woman ſhall have her *Free Bench*, *Quamdiu ſe bene geſſerit, and live chaſte*, and ſhe is Incontinent, of which the Lord hath not Notice, and the Lord admits her Tenant, it was held that it ſhould bind the Lord, though he had *not Notice of the Incontinency*. 4 Le. 240. pl. 390. Mich. 3 Jac. C. B. Wheeler's Caſe.

4. It ſeems, that when a *Tenant for Life makes a Surrender in Fee*, though nothing can paſs by the Surrender but what he hath, yet it ſeems, that *when the Lord admits the Surrenderee* according to this Surrender, then *he has a Fee*; for the Lord has an Eſtate to paſs a Fee-ſimple. Gilb. Treat. of Ten. 178.

(T. b) To what Time the Admittance ſhall have Relation.

1. A. Seiſed of *Freehold and Copyhold* makes a *Leaſe of both* for Years, rendring Rent, and after he grants the Reverſion of the Freehold, and makes a Surrender of the Copyhold to the Uſe of the ſame Perſon, and an Attornment is had of the Freehold, and the Preſentment of the Surrender for the Copyhold is not made until a Year after, yet he in Reverſion ſhall have an Action of *Debt of all the Rent*, for the Preſentment of the Surrender is but a Perfection of the Surrender before made. Lane. 33. cites it adjudged 41 Eliz. B. R. the Caſe of Collins v. Harding.

Cro. E. 606. pl. 6. S. C. —— Mo. 544. pl. 723. S. C. —— 13 Rep. 57. 58. pl. 24. S. C. —— Godb. 139. pl. 169. Harding's Caſe, S. C but the Point of Relation does not clearly appear in any of the ſaid Reports. —— The Admittance relates to the Surrender, and Surrenderee's Title begins from thence. 1 Salk. 185. Benſon v. Scot. —— 3 Lev. 385. S. C. —— 4 Mod. 251. S. C.

2. The *Wife of a Copyholder dying ſeiſed is to have his Eſtate for Life*, *he becomes a Bankrupt*, and the *Commiſſioners bargain and ſell this Land by Deed inrolled*. The *Baron dies*. The *Feme is admitted*, and afterward the *Bargainee is admitted*; and it was held, that the Copyholder was no Tenant after the Deed inrolled, for the Bargain &c. binds and bars his Eſtate, and the Bargainee is barr'd only to take the Profits until the Admittance, which is for the Lord's Benefit in reſpect of the Fine, and not for the Copyholders, and though between the Bargain and Sale, and

Jo. 451. pl. 4. S. C. and that the Bankrupt ſhall not be ſaid to have died ſeiſed of it, notwithſtanding the Vendees

and the Inrollment, the Tenant dies, and his Wife is admitted, yet when the Bargainee is admitted by the Lord the Eſtate ſhall veſt in the Bargainee, and ſhall have Relation to the Bargain and Sale, and ſhall deveſt the Eſtate which the Feme claim'd by the Cuſtom. Cro. C. 568, 569. pl. 6. Hill. 15 Car. B. R. & cites 7 E. 6. Br. Title Jnrolments. Parker v. Bleeke. were not admitted in the Life of the Copyholder.

2. Admittance of Surrenderee ſhall have *Relation to the Surrender.* 4 Mod. 251. 254. Hill. 5 W. & M. in R. Benſon v. Scott. 1 Salk 185. pl. 3. S. C.

(U. b) Pleading of Admittances.

1. WHERE ſome have imagined that nothing ſhould be inveſted in the Heir before Admittance, becauſe every Admittance of an Heir upon a Deſcent amounts to a Grant, and ſo may be pleaded, they are in an Error; for though it be true, that *after Admittance the Heir may in Pleading allege this as a Grant*, and that has been allowed to avoid the Inconveniences that otherwiſe ſhould enſue, for if the Copyholder ſhould be driven in Pleading to ſhew the firſt Grant, either that was made before the Memory of Man, and ſo is not pleadable, or ſince the Memory of Man, and then Cuſtom fails; for this Reaſon the Law has allowed a Copyholder in Pleading to *allege any Admittance, as well upon a Deſcent upon a Surrender, as a Grant, and ſhew the Deſcent to him, and that he entred and well, without any Admittance.* Co. Comp. Cop. 53. S. 41. cites 4 Rep. 22. b. [Mich. 23 & 24 Eliz. C. B.] Brown's Caſe.

2. *But* the *Heir cannot plead that his Anceſtor was ſeiſed in Fee at the Will of the Lord, by Copy of Court Roll of ſuch a Manor, according to the Cuſtom* of the Manor, *and that he died ſeiſed, and* that *the Copyhold deſcended upon him*, becauſe in Truth ſuch an Intereſt is but a particular Intereſt at Will, in Judgment of Law, although it be deſcendible by Cuſtom. Co. Comp. Cop. 53, 54. S. 41. For he is Tenant at Will of the Lord according to the Cuſtom of the Manor.

4 Rep. 22. b. reſolved in Browne's Caſe.

3. In *pleading* Admittance by a Steward he *muſt ſhew the Steward's Name.* Cro. E. 392. pl. 15. Paſch. 37 Eliz. C. B. Brown v. Foſter.

4. When a Copyholder ſurrenders to the Uſe of another, and the Lord admits him, now he who is ſo admitted is in by him that made the Surrender, and *in a Plaint in the Nature of a Writ of Entry in the Per, ſhall be ſuppos'd to be en le Per by him who made the Surrender*, for the Lord is but an Inſtrument to make Admittance, and he who is admitted ſhall not be ſubject to the Charges and Incumbrances of the Lord, for the Lord hath but a cuſtomary Power to make the Admittance ſecundum Effectum ſurſum-redditionis. Supplement to Co. Comp. Cop. 72. S. 6. cites Co. Taverner's Caſe. 4 Rep. 27. a b. pl. 15. Trin. 26 Eliz. B. R. Taverner v. Cromwell, S. C. & S. P. reſolved accordingly.

5. In Admittances made by Under-Stewards, as well as in Admittances made by the Stewards themſelves, it is good Order to expreſs in the Copy, and in the Court-Roll, the Name of the Under-Steward, or the Steward, becauſe *in Pleading* any *Admittance* a Man *muſt ſay*, that *he was admitted by ſuch a one Under-Steward or Steward, naming his Name.* Co. Comp. Cop. 57. S. 46.

This in Roll is Letter (Z) in fol. 505.

[W. b] What Perſons ſhall pay *Fines*, and to whom.

By ſuch Surrender there paſſes no more than what makes the Eſtate, and the reſt remains in the Surrenderor. Brownl. 181. Bicknal v. Tucker, S. C.

1. A Copyholder in Fee ſurrenders to the Uſe of an other for Life, when the Leſſee dies, he ſhall not pay a Fine for a Re-admittance to the Reverſion, for it continued always in him. Co. 9. Marg. Podger 107.

Gilb. Treat. of Ten. 151. cites S. C. and ſays, Quære, whether the Lord in ſuch Caſe muſt admit before the Heir has paid his Fine; and if he does, what Remedy there is for the Fine?

2. Though an *Heir of a Copyholder may ſurrender* to another *before Admittance*, yet he ſhall not prejudice the Lord of his Fine due to him upon the Deſcent, and he is a Tenant by Copy, for the Copy made to his Anceſtor belongeth to him. 4 Rep. 22. b. pl. 1. Mich. 23 & 24 Eliz. C. B. the 3d Reſolution in Brown's Caſe.

3. Admittance of Tenant for Life is Admittance of him in Remainder, but it ſhall not prejudice the Lord as to the Fine from him in Remainder due to the Lord by the Cuſtom. 4 Rep. 23. a. pl. 6. Paſch. 36 Eliz. B. R. Fitch v. Huckley.

4. Tenure by Tenant Right, as it is uſual towards the Borders of Scotland, ſhall not pay any uncertain Fine or Income *at the Change of the Lord by Alienation*, but by Death, which is the Act of God, for otherwiſe the Lord might weary the Tenant by frequent Alienations, but it may be Fine uncertain upon the Alienation of the Tenant, as well upon Death as Diſcent, for that it is the Act of the Tenant, and in his Power. Mich. 1599. The Caſe of the Manor de Thwaites; & les Juſtices accord the ſame holds in Copyholders, for the Cuſtom muſt be reaſonable. Cary's Rep. 9. Egerton (Sir Thomas's) Caſe.

Supplement to Co. Comp. Cop. 84. S. 19. S.P. — Gilb. Treat. of Ten 275. cites S. C. but ſays Quære, Whether a Fine be due of common Right upon the Alteration of the Lord by Death; it ſeems it is not, but only where there's a particular Cuſtom for it; though Ld. Coke's Words are general, and may be interpreted either Way.

5. Of Fines due to the Lord ſome are by Change or Alteration of the Lord, and ſome by the Change or Alteration of the Tenant; the Change of the Lord ought to grow by the Act of God, otherwiſe no Fine can be due, but when the *Change* grows *by the Act of God*, there the Cuſtom is good, as by the *Death of the Lord*, and this upon a Caſe in Chancery referred to Popham Ch. J. and upon Conference with Anderſon &c. and all the Judges of Serjeant's Inn in Fleet-ſtreet, was reſolv'd, and ſo certified into the Chancery, but upon the Change or Alteration of the Tenant a Fine is due to the Lord. Co. Lit. 59. b.

6. If a Copyhold be granted *durante Vita*, and the *Grantee dies*, *living Ceſtuy que Vie*, and a *Stranger enters as a general Occupant*, he ſhall be admitted and pay a Fine. Co. Comp. Cop. 62. S. 56.

7. Where by the Cuſtom of the Manor, the *Bailiff of the Manor is to have the Wardſhip of the Copyhold-Heir being under the Age of* 14, ſuch a Guardian ſhall neither be admitted, nor pay a Fine, becauſe he is but a Partner of the Profits, and that not in his own Right, but in the Right of him to whom he is Guardian. Co. Comp. Cop. 62. S. 56.

8. By

8. By ſpecial Cuſtom Copyholders are to pay Fines *upon Licences* granted unto them *to demiſe* by Indenture, but by general Cuſtom they are to pay Fines only upon Admittances. Co. Comp. Cop. 62. S. 56.

9. If the Lord having a Copyhold by *Eſcheat*, *Forfeiture*, or other Means, *makes a voluntary Admittance*, a Fine is due unto the Ld. Co. Comp. Cop. 62. S. 56. A Fine is due upon Admittance upon a Voluntary Grant. Gilb. Treat. of Ten. 315. cites Co. Comp. Cop.

10. If a Copyholder *ſurrenders to the Uſe of a Stranger*, and the Lord admits, a Fine is due to the Ld. Co. Comp. Cop. 62. S. 56.

11. If a Copyhold be *granted to one and his Heirs durante Vita*, and the *Grantee dies*, and his *Heir enters as a ſpecial Occupant*, where by the Cuſtom of the Manor a Copyhold may be extended, upon the Extent the Party ſhall be admitted, and ſhall pay a Fine. Co. Comp. Cop. 62. S. 56.

12. If the Copyhold Lands of a *Bankrupt* be ſold according to the Statute of the 13 Eliz. cap. 7. the *Vendee* ſhall be admitted and pay a Fine. Co. Comp. Cop. 62. S. 56.

13. If a Copyhold be *granted upon Condition*, and the Condition be broken, and the *Grantee enters*, he ſhall not be admitted, neither pay a Fine, becauſe upon the Breach of the Condition and the Entry, he is to all Intents in Statu quo prius, as if no Grant at all had been made. Co. Comp. Cop. 63. S. 56.

14. If a *Copyholder in Fee ſurrenders for Life, reſerving the Reverſion*, and the *Leſſee for Life dies*, the Copyholder ſhall not be admitted to his Reverſion, neither ſhall he pay a Fine, becauſe the Reverſion was never out of him. Co. Comp. Cop. 63. S. 56.

15. If a *Copyholder be diſſeiſed*, and then *enters upon the Diſſeiſor*, *or recovers by Plaint in the Nature of an Aſſiſe*, he ſhall not be admitted, neither ſhall he pay a Fine, for he continues ſtill Tenant by Copy, notwithſtanding the Diſſeiſin ; *But where by a Plaint a Copyhold is recovered upon the Accruer of a new Title, where he that recovers was never admitted, nor paid Fine*, there upon his Recovery an Admittance is requiſite, and a Fine is due ; *As if a Copyholder died ſeiſed, a Stranger abates, and the Heir recovers by Plaint* in the Nature of an Aſſiſe of Mortdanceſtor, upon this Recovery he ſhall be admitted, and pay a Fine. Co. Comp. Cop. 63. S. 56.

16. If *I take a Wife with a Copyhold in Fee*, tho' by this Intermarriage there accrues a preſent Intereſt to me, yet becauſe I am ſeiſed not Jure Proprio, but Jure Alieno, therefore I ſhall not be admitted, neither ſhall I pay a Fine. Co. Comp. Cop. 63. S. 56.

17. The *ſame Law is if ſhe be a Termor of a Copyhold*, for tho' the Term by the Intermarriage be ſo veſted in me that I may diſpoſe of it without controul, yet becauſe before Diſpoſal, I am poſſeſſed of it but in the Right of my Wife, therefore I ſhall neither be admitted, nor pay a Fine. Co. Comp. Cop. 63. S. 56. cites Pl. C. 418. b.

18. If a Copyhold be *ſurrendred for Life*, the *Remainder to a Stranger*, tho' the Admittance of Tenant for Life be ſufficient to inveſt the Eſtate in him in the Remainder, yet upon the Death of Tenant for Life, he in the Remainder ſhall be admitted and pay a Fine. Co. Comp. Cop. 63. S. 56.

19. So if a Copyhold be *granted to* 3 *habend' ſucceſſive*, where by Cuſtom Succeſſion is in force, if any one dies, he that next ſucceeds ſhall be admitted, and pay a Fine. Co. Comp. Cop. 63. S 56.

20. If 2 *Copartners*, *or Tenants in Common* of a Copyhold be, and the *one dies*, *and the other has all by Deſcent*, he ſhall be admitted, and ſhall pay a Fine ; *But if* 2 *Jointenants* be of a Copyhold, and *one dies*, the

the other ſhall have all by the Surviorſhip without Admittance, or paying a Fine, becauſe Jointenants to all Intents and Purpoſes are ſeiſed per my & per tout. Co. Comp. Cop. 63. S. 56.

Gilb. Treat. of Ten. 209, 210. makes a Quære of this, for tho' the Eſtate be adjudged in the Woman, yet that is no Argument that ſhe ſhall pay no Fine, for the Eſtate is in the Heir by Deſcent, and yet he ſhall pay a Fine, and both are compellible to be admitted, and then why ſhould they not pay a Fine? *So* of *Dower and Curteſy*. Ibid. 210.

21. Upon Admittance of a Feme to her *Widow's Eſtate by the Cuſtom* no Fine is due to the Lord. Noy. 29 Hill. 15 Jac. C. B. in Caſe of Rennington v. Cole.

——If a Copyhold deſcends, and the Ld. admits the Heir, where by the Cuſtom of the Manor the Wife is to have Dower, and the Husband is to be Tenant by the Curteſy of the Copyhold, either of them ſhall be admitted, and ſhall pay a Fine to the Ld. Co. Comp. Cop. 62. pl. S. 56.

But if a Fine is aſſeſſed for the whole Eſtate, there is an End of the Buſineſs; tho' if it be aſſeſs'd only *for a particular Eſtate* the Lord ought to have another; per Hale Ch. J. Mod. 102, pl. 22. Paſch. 26 Car. 2. B. R. in Caſe of Blackburn v. Graves. —— Mod. 102. pl. 8. S. C. —— Gilb. Treat. of Ten. 151. cites S. C.

22. Surrender to *A. for Years, Remainder to B.* The Lord may aſſeſs one Fine for the particular Eſtate, and another for the Remainder; But per Wylde J. he need not till his Eſtate comes into Poſſeſſion. Vent. 260. Trin. 26 Car. 2. B. R. Batmore, (alias, Blackburn) v. Graves.

23. The Court doubted whether the Cuſtom was good as to the claiming an Alienation Fine *upon an Alienation for Life*, becauſe by that the Tenure of the Lands aliened is not altered; for the Reverſion is ſtill held as before by the ſame Tenant. 2. Vent. 135. Hill. 1 and 2 W. and M. in C. B. in Caſe of Holland v. Lancaſter.

24. In a ſpecial Verdict in Ejectment the Caſe was, the *Father* being *ſeiſed of a Copyhold in Fee, ſurrendred* it *to the Uſe of himſelf and his Wife for Life, Remainder to the Son* (the now Defendant) *in Tail*; the *Father and Mother were admitted, and paid a Fine, and being both dead, the Defendant pray'd to be admitted to the Remainder*, which was done, and *a Fine of 58 l. ſet upon him*, which was demanded, and a Day and Place appointed for the Payment of it, *which he did not pay, and ſaid that he thought that none was due, he being admitted by the Admittance of his Father and Mother*, Tenant for Life, and therefore refuſed to pay it; Adjudged, that no Fine is due, unleſs there is a ſpecial Cuſtom for it, and what Ld. Coke ſays 4 Rep. 22, 23. b. that ſuch Admittance ſhall not prejudice the Lord in reſpect of his Fine, is to be intended where ſuch Fine is due by Cuſtom for the Admittance to the Remainder, but *without ſpecial Cuſtom none is due.* 3 Lev. 308, 309. Trin. 3 W. & M. in C. B. Barnes v. Corke.

25. The *Admittance of Tenant for Life is an Admittance of him in Remainder as to veſt the Eſtate, but not to prejudice the Lord of his Fine*, ſaith Ld. Coke; therefore upon the Death of Tenant for Life, he ſhall be admitted, and pay a Fine; for tho' his Eſtate of Tenant for Life veſts, ye he was never Tenant to the Ld. for the Admittance to which he pays his Fine; *But if* a *Copyholder in Fee ſurrenders to* the Uſe of *one for Life, and* the *Tenant for Life dies*, he may enter without any new Admittance, or paying any Fine, for he had his old Eſtate in him, and he was admitted Tenant before; yet it was ſaid by Popham, in **Guppin and Bunney's Caſe**, that one Fine is due in ſuch Caſe, but it is but of little Authority, for the Point of the Caſe was, whether the Admittance of Tenant for Life was the Admittance of him in Remainder, and becauſe it was made an Objection, that if it were, the Ld. would loſe the Fine, which Popham anſwers by ſaying, there is none due in ſuch Caſe, which Objection Ld. Coke anſwers by ſaying, that tho' the Eſtate be veſted in the Remainder-man, yet a Fine is due. Gilb. Treat. of Ten. 181, 182.

26. Where

26. Where the Cuſtom is for a Copyholder's Lands to be extended, the *Extendor* ſhall be admitted and pay a Fine. Gilb. Treat. of Ten. 315.

[X. b] Fines. How much ſhall be paid. And where one or ſeveral.

This in Roll is Letter (Z) pl. 2. in Fol. 505. Cro E. 504. pl. 29. Gyppin v. Bunney ſeems to be S. C. and Popham and Fenner thought that only one Fine was due; but becauſe the other Judges were abſent adjornatur. ——Mo. 465. pl. 658. Tipping v. Bunning S. C. and S. P. and therefore there needs no new Admittance; But when the Lord is to have a Fine [by the Cuſtom ſuppoſe] there a new Admittance is neceſſary.——Gouldsb. 95. pl. 9. Kipping's Caſe S. C. argued but S. P. does not appear.——The Fine paid by Tenant for Life is intire and no new Fine is due for him in *Remainder* but otherwiſe it is of him in *Reverſion*. Mo. 358. pl. 488. Trin. 36 Eliz. Dell. v. Higden.

1. IF a Copyholder in Fee ſurrenders to **the uſe of** one for Life, **the** Remainder to another for Life, **the** Remainder to another in Fee, **by this but one Fine is due; for the particular Eſtates, and the Remainders are but one Eſtate. Mich. 38 & 39. B. R. by Popham.**

2. It is *decreed by Aſſent*, that the Defendant being Lord of the Manor of Alderſwaſly, ſhall have for a Fine of a Copyholder upon a Surrender, one *whole Year's Value*, *as the ſame is reaſonably worth*, according to the uſual Rates of Lands in that Country. Cary's Rep. 77. cites 18 & 19 Eliz. Blackwell & al'. v. Low.

3. If two *Jointenants*, or two *Tenants in Common*, or *Tenant for Life*, *and he in the Remainder*, *join in a Grant* of a Copyhold, one Fine only is due, and it ſhall enure as one Grant only; So *if a Surrender be made*, *and after a Common Recovery is had* by Plaint in the Nature of a Writ of Entry en le poſt, for the better Aſſurance one Fine only ſhall be paid. Co. Comp. Cop. 63. S. 56. cites 4 Rep. 27. b. Hubbard v. Hammond.

4. If one Copyholder has *diverſe ſeveral Lands ſeverally holden by ſeveral Services by Copy*, the *Lord ought to demand ſeveral Fines* for every Parcel which is ſo ſeverally holden, for the Tenant may refuſe to pay the Fine for one Parcel, and pay the Fines for the others. 4 Rep. 28. a. Mich. 42 & 43 Eliz. the third Reſolution in Caſe of Hubbard v. Hammond. Cro. E. 779. pl. 13. Dalton v. Hammond, S. C. and S. P. reſolv'd accordingly.

——Mo. 622. pl 851. S. C. reſolv'd accordingly.

5. If two *ſeveral Copyholders join in a Grant* of their Copyholds *by one Copy*, *or* if *one Copyholder*, *having ſeveral Copyholds*, *grants them by one Copy*, yet the Grantee ſhall pay ſeveral Fines, for they ſhall enure as ſeveral Grant. Co. Comp. Cop. 63. S. 56.

6. 5*l.* 12*s.* 8*d.* was held an unreaſonable Fine for admitting a Surrenderee to a *Cottage*, *and an Acre of Paſture*, being Copyhold of Inheritance; for this is not like to a voluntary Grant, As when the Copyholder hath but an Eſtate for Life, and dieth, or if he hath an Eſtate in Fee-ſimple, and committeth Felony, there *Arbitrio Domini Res æſtimari debet*; but when the Lord is compellable to admit him to whoſe Uſe the Surrender is, and when *Ceſtui que Uſe* is admitted, he ſhall be in by him who made the Surrender, and the Lord is but an Inſtrument to preſent the ſame; And therefore in ſuch Caſe, the Value of two Years for ſuch an Admittance is unreaſonable, eſpecially when the Value of the Supplement to Co. Comp. Cop. 75. S. 10 cites S. C. —— Gilb. Treat. of Ten. 224, 225. cites S. C.

Cottage and one Acre of Paſture is a Rack at fifty three Shillings by the Year. 13 Rep. 3. Mich. 6 Jac. in Willowe's Caſe.

7. If a *Copyhold eſcheats*, the Lord ought to increaſe and improve his Fine before he regrants it, or he has no Remedy afterwards, for he is not compelled to grant it again, and ſo may have *what Fine he will.* Arg. Het. 6. Paſch. 3 Car. C. B. in Caſe of Paſton v. Manne.

Ibid. 96. Popham v. Lancaſter S. P. 12 Car. 1. where the Fines had not been certain, the Court upon Precedents produced, and eſpecially the Principal Caſe of Middleton v. Jackſon decreed, that an improved Year's Value, in a moderate way, ſhall be given and accepted from the Tenant to the Lord for a Fine.

8. A moderate Year's Value is a *reaſonable* Fine in Caſe of *a Tenant-Right* upon every Alienation or Death of the Tenant, or Death of the Lord, and the Defendants to give *Notice* of every Alienation at the Lord's *Court*, and the Fine now aſſeſſed not to be taken as a Fine certain, and a Maſter of this Court to ſet the ſaid Fine. Ch. Rep. 33. 5 Car. 1. Middleton v. Jackſon.

It was agreed by all the Court, that *by the Cuſtoms of ſome Manors a Fine of 4 or 5 Years Value might be reaſonably Set*; as in the Manor of H. and C. *where the Cuſtom is for a Stranger to pay a Fine upon his Admittance* to a Copyhold; but if once a Tenant, he pays a Fine no more; and Dolben cited a Caſe of Pinſent the Prothonotary, who was a rich Man, and purchaſed a Houſe in C. and 5 Years Value was ſet for a Fine; and the Matter was diſputed, and came to a Trial; and it was held to be a reaſonable Fine, and that in ſuch a Caſe he might have ſet 7 Years Value. But in the principal Caſe, which was in Caſe of an Infant the other 3 Judges being of Opinion that the Infant was not bound by the Cuſtom, the Lord Ch. J. conſented, that a Judgment given in C. B. ſhould be affirmed. Freem Rep. 496. pl. 670. Mich. 1689. in Caſe of King v. Dillington.

9. In Treſpaſs, the Queſtion was, whether the Lord might aſſeſs *two Years and an half's Value of the Land according to the Rack-Rent for a Fine*, and for Non-payment enter for a Forfeiture? And all the Court held he could not, for it is unreaſonable; and that *one Year and an half's Rent, according to the improv'd Value, is high enough*, but that the Tenant might refuſe to pay two Years and an half; and Judgment accordingly. Cro. Car. 196. pl. 8. Trin. 6 Car. B. R. Dow v. Golding.

Fin. R. 264. S. C. but the Tenants decreed to renew within one Year after the Leaſes expire, or return from beyond Sea, or attaining 21.

10. Renewing Copies after Expiration of 99 Years abſolute without any Payment of Fines upon Death or Alteration to the Lord, limited at *two Year's Value.* 2 Chan. Rep. 134. 19 Car. 2. Morgant v. Scudamore.

11. Upon a Writ of Error the Queſtion was, whether a Cuſtom for a Copyholder upon his Admittance to pay *a Year's Value of the Land, as it is at the Time of the Admittance*, were a good Cuſtom and ruled in C. B. that it was a good Cuſtom, and the Judges in B. R. inclined that it was a good Cuſtom. Freem. Rep. 494. pl. 669. Paſch. 1682. Anon.

12. An Alienation Fine was ſet forth to be due *upon the Alienation of any Parcel of Lands* or Tenements held of the Manor of M. to have a *Year and half's Rent, by which the Lands or Tenements ſo aliened were held*: So that if the 20th Part of an Acre be aliened, a Fine is to be paid, and that of the whole Reut, for every Parcel is held at the Time of the Alienation by the whole Rent, and no apportioning thereof can be but ſubſequent to the Alienation, and this the whole Court held an unreaſonable Cuſtom; and as it is ſet forth, it could not be otherwiſe underſtood, than that a Fine ſhould be due, viz. a Year and a half's Rent upon the Alienation of any Part of the Lands held by ſuch Rent. 2 Vent. 134, 135. Hill. 1 & 2 W. & M. in C. B. Holland v. Lancaſter.

13. *Tenant*

13. *Tenant for Life, and* he in *Remainder, join in a Grant* of their Copyhold; but one Fine is due. Gilb. Treat. of Ten. 316.

14. So if a *Surrender* be made, *and after a Recovery* is had by Plaint, in the Nature of a Writ of Entry in the Poſt, for the better Aſſurance; but one Fine is due. Gilb. Treat. of Ten. 316.

(Y. b) Fines. Certain or uncertain.

1. A Fine is *not* to be *decided by Witneſſes*, but by Court Rolls, and ordered to go to Hearing upon them. 10 Jac. li. B. fo. 176. Toth. 167, Hopton v. Higgins.

2. To *prove a Cuſtom for uncertainty of* Fines, and not to be certain two Year's Rent, there ought to be ſhewn Court Rolls, and that in Caſes of Deſcents that upon ſuch Admittance they have uſed to pay above two Year's Rent; But Rolls, to prove Uncertainty of Fines (tho' in Caſes of Deſcents) if the Fines are under the Value of two Years Rent, they are no Proof at all, for the Fines muſt be above two Years Rent; for it is a good Cuſtom to pay for Fines upon Admittances, the Value of two Years Rent or under, and the Proofs *muſt be in Caſes of Deſcent*; for *in Caſe of a Sarrender or Purchaſe of a Copyhold the Lord may take what Fine he will*, but ſuch Fines are no Proof of taking uncertain Fines by the Cuſtom but it muſt be in Caſes of Deſcent. Per tot. Cur. abſente Fleming Ch. J. 2 Bulſt. 32. Mich. 10 Jac. on a Trial at Bar Allen v. Abraham.

3. Held in Chancery, that where by *Ancient Rolls of Court* it appeared that the Fines of the Copyholder had been uncertain from the Time of King H. 3. to the 19 H. 6. and from thence to this Day had been *certain*, Except 20 or 30 that theſe few ancient Rolls did *deſtroy the Cuſtom* for certainty of Fine; But if from 19 H. 6. all are certain except a few, and ſo uncertain Rolls before the few ſhall be intended to have eſcaped, and ſhould not deſtroy the Cuſtom for certain Fines. Godb. 265. pl. 365. Trin. 13 Jac. in Canc. Lord Gerard's Caſe.

4. There is ſcarce a Copyhold in England but the Fine is really uncertain; For if the Rolls make it appear that *ſometimes a leſs and ſometimes a greater Sum has been paid for a Fine*, this is a Fine uncertain; Per Richardſon J. to Harvey privately. And he ſaid, that he was of Counſel in a Caſe where the Jury found that the Fine was certain, and afterwards by Bill in Chancery it was decreed upon ſearch of the Rolls to be a Fine uncertain, and that this is now the Ordinary Courſe by Decree in Chancery. Litt. Rep. 252. Paſch. 5 Car. C. B. Anon.

5. Whether Fines be certain or not to regulate the ſame, the moſt Number of Court Rolls are to determine, and the Time. 14 Car. and Mich. 15 Car. Toth. 167. Burraſton v. Walſh.

6. A former Decree was confirmed, and an Award by which the *Commons and Incloſures* between the Lord and his Tenants, and Land in the Bill mentioned were *bounded and aſcertained*, and the *arbitrary Fines reduced to a Certainty*, and enjoyed and paid accordingly till Defendant, who had now purchaſed the Manor, refuſed to be bound by it. Fin. R. 154. Mich. 26 Car. 2. Meadows v. Patherick.

7. In Replevin, the Defendant avowed for Damage feaſant; the Plantiff in Bar of Avowry pleads that it is a Copyhold &c. and that there is a Cuſtom &c. quod quælibet Perſona &c. quæ admiſſa, Ibid. 250, 251. S. C. Error was brought of

this Judgment in B. R. and the Juſtices ſeem'd to agree to the Reaſons offered by Levins, but for the Manner of laying this Cuſtom

miſſa fuit &c. to a Copyholder, ſolveret & Uſi & conſueverunt ſolvere to the Lord for a Fine *tantam denariorum Summam quantam Terræ valebant per Annum Tempore Admiſſionis* prædict' & ſur ceo Demurrer. Levinz J. ſaid, that this Queſtion had been incluſively reſolved 40 Times, viz. in all Caſes where 2 Year's Value had been adjudged reaſonable, and ſaid, that he did not ſee any Difficulty in aſſeſſing the Fine, for the Lord might have the Value enquired by the Homage, and if the true Value was not aſſeſſed in that Caſe, the Party might have taken Iſſue; Adjudged for the Plantiff, per tot. Cur. Skin. 247. 250. pl. 2. Hill. 1 & 2 J. 2. C. B. Titus v. Perkins.

Curia adviſare vult.———3 Mod, 132. S. C. in B. R. and the Court affirmed the firſt Judgment and all held the Cuſtom good.

(Z. b) Fines. How to be aſſeſſed or demanded.

Mo 623. pl. 851. S. C. & S. P.—4 Rep. 28. pl. 16. Hubbard v. Hammond

1. IF *divers Copyholds* deſcend to one, the Lord can't demand *one Fine* for them all, but he ought to demand ſeveral Fines For perhaps the Heir may accept of the one at the Fine aſſeſſed, and refuſe the others on ſuch Fines, Cro. E. 779. pl. 13. Mich. 42 & 43 Eliz. B. R. Dalton v. Hammond.

S. C. and S. P.——And if all ſuch Copyholds are ſurrendred to the Uſe of another and his Heirs, Tenend' per antiqua ſervitia inde debita & de Jure conſueta, there, as was reſolv'd in Tavernor's Caſe, the Tenures are ſeveral, and therefore the Fines ought to be ſeverally aſſeſs'd and demanded. 4 Rep. 28. a. pl. 16. Mich. 42 & 43 Eliz. B. R. Hubard v. Hamond.

Supplement to Co. Comp. Cop. 75. S. 10 cites S. C. and S. P.

2. The *Court and the Jurors* ſhall be *Judges of the Fine, whether* it be *reaſonable* or not, without Suit in Chancery. Mo. 623. pl. 851. Mich. 42 & 43 Eliz. B. R. Dalton v. Hammond.

that it ſhall be determined per Arbitrium boni Viri, and the Court and Juſtices of it ſhall be Judges of the Reaſonableneſs of the ſame, if it be pleaded that the Fine demanded by the Lord or the Diſtreſs for it be unreaſonable and exceſſive. 13 Rep. 2. 3. Mich. 6. Jac. C. B. in Willowe's Caſe S. C. reſolved, and that always when Reaſonableneſs is in Queſtion, the ſame ſhall be determined in the Court where the Action is depending.

3. A Cuſtom that a Copyholder for Life may nominate one or two that ſhall have the Copyhold Lands after his Death for a Fine to be *aſſeſſed by the Homage* if they cannot agree with the Lord is good. Noy. 2. Yelmeſter Cuſtom's Caſe.

4. A *Cuſtom to pay what Fine the Homage ſhould ſet* was ruled to be good; and ſo held in a Caſe Hill. 6. Jac. C. B. Rot. 1613. Freem. Rep. 494. pl. 669. ſays it is cited in the Lord Ch. J. Hale's MS. in Lincoln's Inn Library.

5. By the Cuſtom of a Manor of a Fine was due to the Lord for a *Licence to the Tenant to alien.* It was agreed by all, that the Lord may *aſſeſs a Fine out of the Manor, and* likewiſe he may *make it payable out of the Manor* and Judgment accordingly; *But* if it had been for a Forfeiture, the Court ſaid it might have been *otherwiſe.* Lord Raym. Rep. 44. 45. Paſch. 7 W. 3. C. B. Yaxley v. Rainer.

[A. c] [Fines.]

At what Time due.

This Roll is Letter (A. a)

Fol. 506.

1. A Fine for an Admittance of a Copyholder is not due before Admittance, but after Admittance. Trin. 4 Jac. B. R. between *Fiſh and Rogers*, agreed.

Where the Fine is *certain the Heir ought to tender it on his Prayer to be admitted*, otherwiſe the Lord is not bound to admit him. Cro. E. 779. pl. 13. Mich. 42 & 43 Eliz. B. R. Dalton v. Hammond.——Mo. 623. pl. 851. S. C. he ought to bring it with him to the Court and pay it before Admittance, and if he be not ready to pay ſuch Fine it is a Forfeiture, otherwiſe if the Fine be uncertain, but there he ought to pay it in convenient Time after the Lord has aſſeſſed it, and if he does not pay it, it is a Forfeiture.——Cro. E. 779. S. P. ——Supplement to Co Comp. Cop. 75. S. 10. cites S. C. and S. P. accordingly.—— 4 Rep. 28. a. pl. 16. Hubbard v. Hammond S. C. & S. P. —— Gilb. Treat. of Ten. 205. ſays that as this Caſe is reported by Crooke, it is ſaid, when a Fine is certain, the Heir ought to tender it upon his Prayer to be admitted; As it is reported by Cook, it is ſaid no Fine is due till Admittance, and that Admittance is the Cauſe; and as Crooke reports it, ſo has Mo. 623. and if he does not pay it, it is a Forfeiture. This ſeems to contradict what he ſaid before; for if it cannot be a Forfeiture till Admittance, the Demand of the Fine muſt be of the Perſon of the Tenant to make a Forfeiture; ſo of Rent.——Freem. Rep. 496. Mich. 1689. in Caſe of King v. Dillington, S. P. ſaid to be accordingly.——4 Rep. 28. a pl. 16. in Caſe of Hubbard v. Hammond Popham Ch. J. ſays it was adjudg'd in one Sands's Caſe, that no Fine is due to the Lord, either upon Surrender or Deſcent till Admittance, for the Admittance is the Cauſe of the Fine, and if after the Tenant denies to pay it, is a Forfeiture; And that ſo it was reſolv'd by Wray and Periam Juſtices of Aſſiſe in Suffolk, between Sir Nich. Bacon and Flatman.——Supplement to Co. Comp. Cop. 74 S. 10. cites S. C.

2. The *Heir* of a Copyholder *within Age* is not bound to come to any Court during his Nonage to tender his Fine. 3 Le. 221. pl. 294. Paſch 30 Eliz. B. R. Anderſon v. Hayward.

4 Le. 30. pl. 84. S. C. in totidem Verbis.

3. Preſcription that Copyholder ſhall *pay a Fine on Change of every Lord* was ruled a void Cuſtom by all the Judges, for Lord may change his Manor every Day, but if it be that *after the Death* of the Lord a Fine be paid, it is a good Cuſtom, for it is the Act of God. Arg. Litt. R. 233. Mich. 4 Car. C. B. cites Armſtrong's Caſe.

Hetl. 127. Arg. cites S. C. accordingly.—The Admittance of Tenant for Life is the Admittance of him in Remainder becauſe they make but one Eſtate; but the Lord ſhall have a Fine for the Remainder-man's Intereſt, but the Remainder-man need not pay it till after the Death of Tenant for Life, for then he becomes Tenant to the Lord. Mich. 8 W. 3. B. R. per Holt cites Mod. 120. Blackbourn v. Greaves, and adds, that the Admittance of Tenant for Life is the Admittance of him in Remainder, ſo as to veſt the Eſtate, but not to prejudice the Lord of his Fine, for after the Death of Tenant for Life, be in Remainder ſhall be admitted again. Quære. Gilb. Treat. of Ten. 158.

4. There is no Fine due to a Lord *ſo long as he has a Tenant.* 3 Ch. R. 36. Paſch. 21 Car. 2. in Caſe of the Attorney General v. Sands.

5. The Defendant and others were the Plaintiff's Tenants in the North, and the Duke *claimed a general Fine upon the Death of the late Dutcheſs*; and a great Number of Tenants denying the Duke's Right to ſuch a Fine, as being only Tenant for Life by Settlement &c. the Duke brought his original Bill to eſtabliſh his Right. The Defendants by Anſwer inſiſted, the Duke was not intitled to a general Fine *as next admitting Lord upon the Dutcheſs's Death*, and Defendants brought a Croſs-Bill to be relieved againſt the Duke's Demands, and to eſtabliſh their Rights.

Fortiſcue Aland, Rep. 42. Mich. 12 Geo. 1. in B. R. the Duke of Somerſet v. France & al' S. C. ſays, it was agreed, that a Cuſtom

that every Copyholder ſhall upon the Charge of every Ld. pay a Fine is a void Cuſtom; but that the Court agreed, that where the Lord is only Tenant for Life, or Tenant by the Curteſy ſuch Cuſtom is good.

Upon the Hearing this Cauſe 11 June laſt, Ld. Chancellor *directed an Iſſue*, whether the Duke was intitled to a general Fine upon the Death of the Dutcheſs as next admitting Lord, or not.

And upon Trial at the Bar of B. R. the laſt Term it was *found for the Duke*, and now upon the Equity reſerved, *the Court declared and eſtabliſhed the Duke's Right to the general Fine*, and decreed the Tenants to pay the Fines aſſeſſed, reſerving a Liberty to ſuch of the Tenants as ſhould think fit to try the Reaſonableneſs of the Fine aſſeſs'd upon Ejectment to be brought by the Duke, at the Peril of forfeiting their Eſtates. MS Rep. Mich. Vac. 1735. Sommerſet (Duke) v. Freame & al' & e Contra.

(B. c) What Remedy lies for the Lord for his Fines.

Debt will lie for a Fine upon an Admittance to a Copyhold; admitted by all Carth. 92. Mich. 1 W. & M. in B. R. in a Nota, in the Caſe of Shuttleworth v. Garnet. ——— Gilb. Treat. of Ten. 274, 275 cites S. C. and ſays it ſeems it lies in any Caſe; for the Verdict finding that Copyholders ought to pay a Fine certain, did not any more intitle the Lord to his Action of Debt, than he was before; and it ſeems to me, that if upon Demand he refuſes to pay the Fine, it is a Forfeiture. It is made a Quære in that Caſe, whether if a Copyholder in Fee die, and his Heir waives the Poſſeſſion, and refuſes to be admitted, whether the Lord ſhall have Debt for the Fine? and the Reporter thinks he cannot waive the Poſſeſſion, which to me it ſeems he may do in Court of Record, or in that Caſe of Copyhold Lands in the Lord's Court; and if he may do it, then no Fine is due.

1. THE Lord may bring *Action of Debt* againſt the Copyholder for his Fine; Per Windham and Twiſden Juſtices, and not denied by any, and Twiſden ſaid that ſo it was held by Foſter J. 15 Jac. which was not denied, but it was ſaid, that the Opinion of Bacon was e Contra. Sid. 58. pl. 26. Mich 13 Car. 2. B. R. in Caſe of Wheeler v. Honour.

Gilb Treat. of Ten. 274, 275. cites S. C. and ſays it ſeems to him, that the Heir may waive the Poſſeſſion in Court of Record. or in the Caſe of Copyhold Lands in the Lord's Court; and if he may do it, then no Fine is due.

2. If a Copyholder be in Fee where the Fine is certain, and his *Heir waives the Poſſeſſion*, Quære if the Lord may have Action of Debt againſt him for this Fine; The Reporter ſays it ſeems to him that he cannot, inaſmuch as he refuſed to be admitted and waived the Poſſeſſion. But then he makes a Quære as to the Waiver of the Poſſeſſion, becauſe ſome hold that he cannot waive the Poſſeſſion; for, being an Inheritance, Intereſt deſcends, and therefore Præcipe quod reddat lies againſt the Heir at Common Law before his Entry. Sid. 58. pl. 26. Mich. 13 Car. 2. in a Nota at the End of the Caſe of Wheeler v. Honour.

3. It is not De communi Jure that if the Tenant refuſes to pay the Fine that he *forfeits his Eſtate*, for in ſome Places the Lord *ſhall ſeiſe* tantum *quouſque* &c. and therefore here he ought to allege *a Cuſtom that he ſhall forfeit his Eſtate for a Refuſal*. Arg. and ſeems admitted. Skin. 250. Hill. 1 & 2 Jac. 2. C. B. Titus v. Perkins.

4. If the Lord demands more than he ought, he may make his Demand de novo, for the Judge, in Caſe of a *greater Demand than is due*, ought *not* to *adjudge as much as is due* to the Lord, and bar him from the Reſidue, *but* ought to adjudge *againſt him for the Whole*, and that his

his Entry was tortious if he had entered, and put him to a new Demand; Per Herbert Ch. J. Skin. 249. Hill. 1 & 2 Jac. 2. C. B. in Case of Titus v. Perkins.

5. 9 *Geo.* 1. *cap* 29. *S.* 1. Enacts, that *where any Persons under the Age of* 21 *Years, or Femes Covert, shall be intitled by Descent or Surrender to the Use of a last Will, to be admitted Tenants of any Copyhold Tenements, such Infant or Feme Covert in their proper Persons, or such Feme Covert by her Attorney, or such Infant by his Guardian, then his Attorney (for which Purpose they are impower'd by Writing to appoint Attornies) shall appear at one of the three next Courts which shall be kept for such Manor, whereof such Tenements shall be Parcel, and shall there tender themselves to be admitted Tenants, and in Default of such Appearance, and of Acceptance of such Admittance, the Lord or his Steward, after three Courts holden and Proclamations made, may nominate at any subsequent Court, any fit Person to be Guardian or Attorney for such Infant or Feme Covert for that Purpose only, and by such Guardian or Attorney may admit such Infant or Feme Covert, and impose such Fine as might have been imposed, if such Infant had been of full Age, or such Feme Covert unmarried.*

6. *S.* 2. *The Fine set thereon may be demanded by the Bailiff, by a Note signed by the Lord or his Steward, to be left with such Infant or Feme Covert, or with the Guardian of such Infant, or Husband of such Feme Covert, or with the Tenant of the Tenements to which they were admitted; and if the Fine be not paid to the Lord or his Steward, within three Months after Demand, the Lord may enter upon such Copyhold Estate, and hold the same, and receive the Rents, but without Liberty to sell any Timber till by such Rents he be paid the Fine with Costs, although such Infant or Feme Covert happen to die before such Costs and Fines be raised; of all which Rents received the Lord shall yearly on Demand render an Account, and pay the Surplus to such Person as shall be intitled.*

7. *S.* 3. *As soon as such Fine and Cost shall be satisfied, or if after such Seisure and Entry the Fine and Costs shall be tendered, then such Infant or Feme Covert or other Person intitled may enter and take Possession; and if the Lord, after the Fine and Costs satisfied, or tender'd shall refuse to deliver Possession, he shall be liable to make Satisfaction for all Damages and Costs.*

8. *S.* 4. *Where any Infant or Feme Covert shall be admitted to any Copyhold Tenements, if the Guardian of such Infant, or Husband of such Feme Covert, shall pay the Lord the Fine and the Costs, then the Guardian or the Husband, their Executors &c. may enter into, and hold the said Copyhold Tenements, and receive the Rents till they be satisfied all the Money they shall disburse on the Account aforesaid, notwithstanding the Death of such Infant or Feme Covert.*

9. *S.* 6. *If the Fine be imposed in any of the Cases before mentioned shall not be warranted by the Custom of the Manor, such Infant or Feme Covert shall be at Liberty to controvert the Legality of such Fine, as they might have done if this Act had not been made.*

(C. c) Remedy for Fines after the Lord's Death. For whom it lies.

Carth. 90. S. C. adjudged accordingly, by three Juſtices against Holt Ch. J. —— Comb. 151. S. C. adjudged by three Juſtices, contra Holt, that an Indebitatus Aſſumpſit lies for the Lord of a Copyhold Manor for a Fine; but this Caſe does not mention that the Action was brought by, but againſt an Executor. — 3 Mod. 239. S. C. adjudg'd by three Juſtices, contra Holt Ch. J. for he held, that if the Defendant had died indebted to another by Bond, and had not Aſſets beſides that would ſatisfy this Fine, if the Executor had paid it to the Plaintiff, it would have been a Devaſtavit in him.

1. THE Lord aſſeſſed a Fine upon Admittance of a Copyholder of Inheritance and died. *Executors brought an Aſſumpſit*, and held per 3 Juſtices, that it lies; But Holt Ch. J. contra, becauſe it is a Duty ariſing out of an Inheritance, Cuſtom, or Tenure; but by the other three in this Caſe the Fine is ſet, and does not depend on the Inheritance, bu tis as Fruit fallen. 3 Lev. 161. Trin. 1 W. & M. in C. B. Shuttleworth v. Garnet.

And if the Heir dies before Payment of ſuch cuſtomary Fine, Action lies for his Adminiſtrator. Ibid.

2. The Heir can't *enter for a Fine in his Anceſtor's* Time; but per Holt Ch. J. if it were forfeited and demanded he may. Show. 35. Trin. 1 W. & M. in Caſe of Shuttleworth v. Garret.

(D. c) Forfeiture. In what Caſes. And the Effect thereof.

Lord Coke ſays, that if a Copyholder be outlawed or *excommunicated*, upon Preſentment the Lord ſhall have the Profits of the Lands. It is ſaid in Lex Cuſt. 210. that if a Copyholder be *outlawed in a Perſonal Action*, it is no Forfeiture of his Copyhold, but the King ſhall have the Profits; Quære of this; For then how can the Lord have his Services paid him? Quære, if a Copyholder forfeits any Thing in Utlawry, unleſs *for a capital Crime*. Gilb. Treat. of Ten. 227.

1. WHERE a Copyholder is *outlaw'd* the King ſhall have the Profits of his Copyhold Lands, and the Lord has not any Remedy for his Rent. Arg. Le. 99. at the End of pl. 126. Mich. 30 Eliz.

Hetl. 127. cites S. C.

2. A Copyhold is not determin'd or forfeited by *Outlawry*. Litt. Rep. 234. Arg. cites it as adjudg'd 44 Eliz.

3. All Forfeitures may be reduced into theſe Heads; either *voluntary* Acts done to the Prejudice of the Lord, or *negligent or wilful Refuſal* to do and pay his Duties and Services to the Lord, which by the Laws and Cuſtoms of the Manor he ought to do and perform. Supplement to Co. Comp. Cop. 74. S. 9.

4. An *Entry before Admittance* is no Forfeiture, without a ſpecial Cuſtom pleaded, but the Heir may make a Forfeiture for Non-payment of the Rent, as the Cuſtom was there pleaded before Admittance. Calth. Reading 60. cites 30 H. 8. Dy. 41. 16. there.

5. If the *Tenants have uſed to have Common of Paſture in their Lord's Woods, for Horſe-Cattle*, and *they put in their Neate-Cattle, and deſtroy the Woods*

Woods, this is an Abuſer; but it is but *fineable, and no forfeiture of the Common*, which they might have rightfully uſed, no more than if they have Common for a certain Number of Beaſts in the Lord's Soil, and they will exceed the Number; this abuſe by their Surcharging is only fineable, and no forfeiture. Calth. Read. 26.

6. Where the Law gives the Lord *other Recompence* it never will make a Forfeiture. Litt. Rep. 267. Paſch. 5 Car. C. B. Paſton v. Utbert. Hutt. 106. S. C. and of the ſame Opinion were all the Court. —Het. 5. Paſton v. Manne, S. C. adjornatur.

7. By Forfeiture Copyhold is *extinguiſhed*, and ſo determined. Arg. Skin. 8. Mich. 33 Car. 2 B. R. MS. Rep. Trin. 7 Geo. in Canc. Sir Henry Peachy v. the Duke and Dutcheſs of Somerſet.

8. The Caſe of a Copyholder was *compared to the Caſe of a Tenant at Will*, viz. that which would be a Determination of the Will at Common Law, is a Forfeiture of the Copyhold. 11 Mod. 94. pl. 3. Arg. Mich. 5 Ann. B. R. Anon.

9. Sir H. P. *Copyholder in Fee* of Lands held of the Manor of Petworth in the County of Suſſex, which belonged to the Defendants in 1693, *makes a Settlement of them on his Marriage* with Jane Janet, *in Truſt for himſelf for Life, then to Jane for Life, then to the firſt and every other Son of that Marriage in Tail Male ſucceſſively* &c. The Premiſſes were afterwards ſurrender'd to the Uſes of the Settlement, which *Surrender was accepted by the Defendant, Lord of the Manor, but no Admittance upon it, nor any Fine that appear'd*; Sir Henry had Iſſue the other Plaintiff his eldeſt Son, and Jane died. The Bill charges, that the Defendants pretending that the Plaintiffs, by *leaſing a Meadow, Part of the Copyhold, without Licence* from them, contrary to the Cuſtom of the Manor, had forfeited the ſaid Copyhold Meadow to them as Lords of the ſaid Manor, who inſiſted upon the ſaid Forfeiture, and brought an Ejectment againſt the Plaintiff, Sir Henry, to recover the Poſſeſſion; the Bill therefore prayed to be relieved againſt the ſaid Forfeiture upon Payment of Coſts &c.

The Defendants by their Anſwer inſiſt, that the Cuſtom of the Manor was eſtabliſh'd by Decree of this Court 36 Eliz. yet the Plaintiff, Sir H. Peachy, 25 January 1714, had made a Leaſe of this Copyhold Meadow to one Allen for 11 Years, 13 l. per Ann. without Licence from the Defendants, and they do inſiſt upon this Leaſe as a poſitive and wilful Breach of the Cuſtom, and alſo, that the Plaintiff had forfeited ſeveral other Copyhold Tenements by *grubbing up Hedges, Topping, and Lopping Timber Trees, and digging Quarries* &c.

The *Plaintiffs*, upon this, *bring a ſupplemental Bill, and charge, that the ſeveral Leaſes referr'd to by the Anſwer were made by one Dee, then Steward to the Defendants* &c. *and were made without any Deſign to prejudice the Defendants, and as to the Pretence of Waſte they charge, that about 25 Years ago the Defendants did ſell ſeveral Timber Trees to ſeveral Copyholders, and among the reſt ſome to the Plaintiff, with Liberty to carry them off in 15 Years, which was the ſame Timber, and no other*; that *as to Hedges grubb'd up, they were ſuch as grew between Copyhold Lands on both Sides, and not between Copyhold and Freehold.*

The Anſwer to this Bill *admitted Dee to be Steward to the Defendants*, and put the other Matters in Iſſue.

Counſel for the Plaintiffs cited ſeveral Caſes of Relief againſt Forfeitures in this Court, and particularly in the Caſes of Copyhold, **Cox v. Pigford**, Tempore Harcourt C. Bill brought to be reliev'd againſt a Forfeiture of a Copyhold, in which Caſe Mr. Vernon cited ſeveral Caſes for the Plaintiff, (ſcil) **Thomas v. Porter**, 1 Chan. Caſes 95. where Relief was decreed in Caſe of *voluntary Waſte* (Sed Vide the Caſe whether

ther the Queſtion was voluntary Waſte or not) **Nash v. the Earl of Derby** 20 Feb. 4 Ann. per Cowper C. Bill to be reliev'd againſt a Forfeiture of a Copyhold by *felling of Timber*, there the Queſtion was, if the Timber was imploy'd in the Repairs of the Copyhold or not? And after an Ejectment brought, and one Verdict for the Copyholder, and another Verdict for the Lord, the Copyholder was reliev'd in Equity upon Payment of the full Value of the Timber felled, and the Coſts of Law, and in Equity, he was reſtored to the Poſſeſſion of the Copyhold.

Cudmore v. Raven in Canc. a *Quaker Copyholder refuſed to do Fealty*; the Lord ſeiſed for the Forfeiture, and the Quaker was reliev'd. In the principal Caſe of **Cox. v. Higford**, Harcourt C. diſmis'd the Bill, but that was upon the ſpecial Circumſtances, it appearing that there had been 30 Years Obſtinacy in the Tenant, and Refuſal to repair, and do Homage, and that the Lord had made ſeveral Offers &c. if he would repair &c.

Whiſtler v. Cage, per Coventry C. S. a Surrender made and preſented in Court, but a Forfeiture inſiſted on, becauſe the Surrender was not made to two Tenants of the Manor, the Plaintiff was relieved paying the Fine, and the Lord paid Coſts. **Shelly v. Maſon** per Coventry C. S. a Forfeiture inſiſted on for *leaſing without Licence*, the Copyholder was reliev'd, and the Lord decreed to account for the Profits, and reſtore the Poſſeſſion. **Lucas v. Pennington**, the Caſes of **Cox v. Brown**, and **Marſh v. Fuller** were cited, where an Entry for *Non-payment of Rent* by Copyholder was reliev'd againſt in this Court on Payment of the Rent.

Counſel for the Defendants argued, that at Law this is a Forfeiture, and that two Points were to be conſider'd in the Caſe.

1ſt. If the Court can relieve at all in ſuch a Caſe?

2dly, If it be reaſonable to do it in the preſent Caſe?

This is different from the common Caſe of Forfeitures for Non-payment of Rent or Money, which are Matters depending on the Agreement of the Parties, and for which, if a Circumſtance is ſlipt &c. a Compenſation may be made. Here the Copyholder is by Cuſtom but a Tenant at Will, and his Leaſe without Licence is a Determination of his Will, and conſequently of his Eſtate, ſo as to relieve here is in Effect to relieve againſt a Cuſtom, and totally alter the Nature of the Copyholder's Eſtate. The Caſe of **Cox and Brown** cited for the Plaintiff had ſpecial Circumſtance, the *Aſſignment of the Leaſe* there (which makes the Forfeiture) was *made for Payment of Debts*, and that was the Reaſon the Court there reliev'd againſt the Forfeiture. The Caſe at Law likeſt to this is, where Tenant for Life makes a Feoffment, or levies a Fine, the Reaſon of the Forfeiture is, for that the Tenant takes upon him to grant a larger Eſtate than his Intereſt will bear. The Caſe of **Morgan v. Scudamore** was no more, than whether the Lord ſhould be at Liberty to ſet what Fine he pleas'd, or be reſtrained by the Court where the Fine was arbitrary, and the Lord was limited by the Court to two Years Value. As to the Caſe of **Thomas v. Porter** 1 Chan. Caſes 95. there was ſome Difference about the Value of the Timber fell'd, but the Chancellor declar'd he would not relieve in Caſe of wilful Waſte, and referr'd the Cauſe to the Biſhop, the Defendant, though he afterwards directed an Iſſue to try if the primary Intention of felling the Timber war to do Waſte, or as the Order was worded, to try whether the Waſte was wilful or not, and the Plaintiff was releiv'd upon the 2d Verdict for him. **Cox v. Higford** was of Permiſſive Waſte.

This Caſe is very ſtrong againſt Relief upon the Circumſtances of it; For the Plantiff in 1694. made no leſs than 3 Leaſes without Licence, and it is in Proof he endeavour'd to make a Mutiny among the Tenants

nants of the Manor, by diſſwading the Homage from preſenting Perſons who had fell'd Timber, which are very great Aggravations in the Caſe.

And as the Law is with the Defendants, and there are no Precedents in Equity of Relief in ſuch Caſes, and if there were, theſe Aggravations would Exempt this Caſe from thoſe Rules, there ought to be no Relief here. It was alſo Urged by Mr. Mead for the Defendants, that as this Caſe was, the Plantiff was not proper for Relief in Equity. That this Caſe did not come within any of the Rules touching Relief againſt Forfeitures in this Court. The moſt general Rule that he could find was laid down in **Cox and Ruſſell's Caſe** 2 Vent. 352. that a Forfeiture ſhould not bind where a Thing may be done afterwards, or a Compenſation made for it; As where the Condition is to pay Money, or the like, and the Relief given in that Caſe was on the want of a Circumſtance only; And as to the Caſes of Relief againſt Conditions of Re-entry for Non-payment of Rent, and of Mortgages Forfeited &c. they have gone upon this, that ſuch Conditions are as Penalties againſt which this Conrt will relieve; but there are many Caſes where a Court of Equity will not give Relief againſt Forfeitures, as the Caſe of **Bertie and Lord Falkland,** per Somers C. and afterwards in Dom' Proc. *where the Condition is precedent* to the veſting of the Eſtate, this Court will not relieve againſt the Breach thereof, tho' in many Caſes it will relieve againſt a *Condition ſubſequent* by which an Eſtate is to be diveſted, becauſe that falls under the Rule of Compenſation, and ſuch Conditions are not favoured. So was the Caſe of **Fry v. Porter** 1 Chan. Caſes 138. 1 Mod. 300. per Bridgman C. S aſſiſted with the Judges, where Relief was refuſed againſt the Breach of a Condition. It is a ſtronger Caſe here, becauſe *the Condition here is annex'd to the Eſtate by the Law, and not by Act of the Party,* and if therefore Relief ſhould be given in this Caſe, it would be to make a new Law; For *by the Law a Copyholder is no more than a Tenant at Will, ſubject to the Cuſtoms of the Manor, which if he breaks, his Eſtate is by Law Forfeited.* It is true, (according to the Caſe of **Ford and Hoskins,** Cro. 368. and **Weſtwick's Caſe,** 4 Co. 28. b.) that Chancery can alone compel the Lord to hold a Court for the Admiſſion of a Copyholder; So this Court has reliev'd where a Lord and his Steward had by a Fraud got a Freeholder to be admitted, as by Copy of Court-Roll, as in the Caſe of **Hammond v. Ainge,** per Parker C. but in the Caſe of **Smith and ux. v. Dean and Chapter of St. Pauls, and Rugle,** per Jefferies C. and reported in Parl. Caſes 67. A Bill was brought to compel the Lord of a Manor to receive a Petition in Nature of a Writ of falſe Judgement to reverſe a Recovery in the Court of the Manor, whereby an Eſtate Tail was barr'd under which the Plantiff claim'd, the Bill was Diſmiſſed, and the Diſmiſſion affirm'd in Dom' Proc'. There is no Caſe where a Copyholder has come for Relief againſt a Forfeiture but upequitable Circumſtances, and in this Caſe all the Plantiff's Equity is, as he ſets it out in his Original Bill, that the Leaſes were made by Miſtake &c. and in his ſupplimental Bill, that the Leaſes were made by the Under-Steward of the Manor, and he offers to pay Coſts at Law, and in Equity, to be reliev'd; Now as to the Pretence of Ignorance or Miſtake, the Copyholder is bound to take Notice of the Tenure at all Events. As to the Caſe of **Nash v. the Earl of Derby,** there were equitable Circumſtances, ſo in the Caſe of **Cudmore v. Raven,** of the Quaker's refuſing to do Fealty, and thereupon the Lord enter'd for the Forfeiture, probably there were ſome ſuch Circumſtances, for the Lord might be aware of his Perſwaſion, and might take an unjuſt Advantage, and Conditions annex'd to Copyholds ſeem in the Eye of the Law to be different from thoſe annex'd to Freeholds, as in the Caſe

Caſe in Hardreſs; That the King can't take Advantage of the Forfeiture of a Copyhold Eſtate in Caſe of Treaſon, becauſe the King can't be admitted as Tenant to any Lord.

As this Caſe is compoſed of many Ingredients of Forfeiture, among which are *voluntary Waſte, and altering the Boundaries*, thoſe *go to the Diſinheriſon of the Lord, and the Deſtruction of his Eſtate and Manor, eſpecially when*, as in this Caſe, they are *repeated*, and the Caſes where Relief has been given are generally of one ſingle Act of Forfeiture, and that extenuated by equitable Circumſtances, but beſides all the reſt is in Proof here that the Plantiff, Sir Henry Peachy, has excited the Tenants at ſeveral Courts to break the Cuſtoms of the Manor &c. by declaring that they were Badges of Slavery, and that he was for Liberty, and the like. And he mentioned a Caſe cited by Attorney General, as decreed in the Dutchy Court, where they would not relieve againſt a Forfeiture for *plowing up an ancient Meadow*, and concluded that this Caſe did not come within the Reaſons of Relief upon the foot of Compenſation.

Reply by Cheſhire Serjeant; He cited the Caſe in 1 Rolls Abr. 854. **Piers v. Alevy and Home**, reported in Owen, 641. Le. 126. Huſband ſeiſed in Right of his Wife for Life of the Wife, infeoffs another to the Feoffee, his Heirs and Aſſigns, ad ſolum Opus et Uſum of the Wife during her Life; it his there doubted if this be a Forfeiture, becauſe of the laſt Words, (during her Life,) which ſeems applicable to the whole Sentence precedent, Ut Res Magis valeat quam pereat, but he ſubmitted ſuppoſing that to be a Forfeiture at Law, if this Court would not relieve againſt it, and put the Caſe of Tenant for Life levying a Fine ſur Conuſance de droit come ceo &c. and declaring the Uſes of it by Deed precedent or ſubſequent, to be ſuch as Tenant for Life might lawfully make, if the Reverſioner in that Caſe ſhould enter for the Forfeiture, whether this Court would not relieve againſt it.

Mr. Talbot inſiſted in his Reply for the Plaintiff, that there were divers Inſtances of Relief given her againſt the Breach of a Condition by Copyholders, viz. Relief given in Caſe of *Non-payment of a Fine*, that is, Relief againſt the Breach of a Condition in Law. In the Caſe of **Cox v. Higford** there was this Circumſtance againſt the Plaintiff, that he came here for Relief after the Lord had been 9 Years in Poſſeſſion under the Forfeiture, and though the Leaſe by the Copyholder be a Diſſeiſin to the Lord, yet it is ſo but at his Election, and the Fine for the Leaſe is capable of being aſcertain'd ſo as the Lord may have a Recompence.

As to the Objection that the Leaſe is a Determination of the Will of the Copyholder, and conſequently of the Tenancy, it is poſſible when the Tenants were meer Tenants at Will it might be ſo underſtood, but Time and judicial Determinations have changed the Nature of their Intereſt, and they have ſomething very near, if not properly an Inheritance; and as to the Caſe of Tenant for Life making a Feoffment, it is hard to imagine that he can do it without intending to prejudice the Inheritance, which may therefore incapacitate him for Relief, but a Copyholder that looks upon himſelf as Owner of the Inheritance on ſuch grounds, cannot be ſuppoſed to have any ſuch View in leaſing, eſpecially when the Leaſe takes Notice that the Lands are Copyhold, as in the preſent Caſe, and ſince the Leaſe is only a Diſſeiſin to the Lord at his own Election.

Reſolutio Curiæ; A Copyholder is conſidered at Law as a Tenant at Will to all Purpoſes, except the Continuance of his Eſtate, but it is true, there have been many favourable Reſolutions for the Benefit of the Copyholder, by which he has got an eſtabliſh'd Eſtate, and the

Lord

Lord cannot determine his Will otherwiſe than as the Cuſtom allows; formerly the Tenant was to perform all his Services while he continued Tenant, which was at the Lord's Will, but the Will cannot now be determined but where the Cuſtom doth allow it ſo to be, and in the Caſe of Tenant's *making a greater Eſtate than he lawfully may*, that *doth determine his Will*; *for it is an Uſurpation upon the Right of the Lord*, and *the Caſes of Tenant for Life leaſing pur auter vie, or Tenant for a great Number of Years leaſing for Life, have been held Forfeitures, not from any Notion of their intending Damage to the Inheritance, but as it is a quitting or diſclaiming their antient Right which is thereby determined*, and this is the Caſe here. Now the Queſtion is, What there is to relieve upon in Equity in this Caſe? To ſay this is a hard Law is to repeal it here; it has been admitted on the Part of the Plaintiffs, that in the Caſe of Waſte, where the Place waſted and treble Damages are recovered, there can be no Relief, tho' the treble Damages are more than a ſufficient Recompence to the Reverſioner, but that they ſay is by a Statute Law; it is true, but there is no Difference in a Common Law Caſe, if there were, it would confound the Law; It is true, in Caſes *where the Condition annex'd is as a Security to have a Thing done, this Court can relieve in Caſe of Non-performance, becauſe the Thing may be done tho' not perhaps at the ſame Day or Place* &c. the Party for whoſe Benefit the Thing is to be done has all that he in Conſcience can ask, but this Caſe cannot come under the Notion of a Compenſation, *the Lord here is not hurt, ſo cannot be made amends, but it ſtands on the foot of the Nature of the Tenants Eſtate.* This Court has relieved againſt Forfeitures for Non-payment of a Fine, or of Rent by the Copyholder, the Forfeiture there is conſider'd only as a Security to the Lord for his Fine, or his Rent, and the Thing is done in Effect and made up as advantageouſly for the Party, tho' it varies in Circumſtance of Time, Place, or the like; nor can the Law in this Caſe of Forfeitures be called a harſh Law for the Copyholders, becauſe it has given them in other Things ſo many Advantages &c. This Caſe is ſtronger than any that have been mention'd, it makes nothing for the Plaintiff that the Lords Stewards was a Witneſs to the Leaſe, for it is not pretended that he was ſo with the Duke of Somerſet's Notice, and the Plantiff indeed put Confidence in him, but not the Defendants, and it would be ſtrange if his Acts ſhould be conſtrued to prejudice thoſe who did not truſt him; here have been no leſs than 3 Leaſes made at different Times, and it won't avail that it is taken Notice of in the Leaſes, that the Lands are Copyhold, ſo long as the Ground of the Forfeiture is the Tenant's granting a larger Eſtate than he can grant without Licence from the Lord, and it is certain that a Repetition of theſe Acts would in Time deſtroy the Manor, and the Plaintiff's Diſcourſes (which are proved) exciting the Tenants to get rid as it were of their baſe Tenure, is a Circumſtance againſt him. I ſee no equitable Circumſtance in this Caſe to vary it from what it would be at Law; it was proper enough for the Plaintiff to come here to diſcover what were the Forfeitures inſiſted on, that he might be prepared at a Trial to defend againſt them, but now that Diſcovery is had it is merely at Law upon the Queſtion, Forfeiture or no Forfeiture? I cannot relieve the Plaintiffs.

This in Roll is Letter (D.) in fol. 507.

[E. c] *What Act or Thing* ſhall be *a Forfeiture.*

1. IF a **Copyholder** comes into Court, and ſays he renounces his Copy, **this is not any Forfeiture. M. 37 El. B. ſo held.**

(F. c) Forfeiture by Misfeaſance.

3. Le. 108. pl. 158. Trin. 26 Eliz. B. R. Taverner v. Cromwell, S. P. argued, but at length the Court wiſhed the Jury to find the ſpecial Matter, and to refer the ſame to the Court whether it was a Forfeiture or not. — * This ſeems Miſprinted.

1. FOrging *new Cuſtoms* is a Forfeiture, for it tends to the Diſheriſon of the Ld. Arg. Het. 7. cites D. * 228.

2. *Outlawry* is no Determination or Forfeiture of Copyhold Eſtates. Het. 127. cites it to have been ſo adjudged 44 El.

3. If a Copyholder *in Preſence of the Court ſpeaks irreverent Words of the Lord, as that the Lord exacteth and extorteth unreaſonable Fines, and undue Services*, this is finable only, but no forfeiture; and if he ſays in Court, *that he will deviſe a Means no longer to be the Lord's Copyholder*, this is neither Cauſe of Fine nor Forfeiture; for perhaps the Means that he intended was lawful, viz. by paſſing away his Copyhold; Et Ubi ſenſus Verborum eſt multiplex, Verba ſemper ſunt accipienda in meliori ſenſu. Co. Comp. Cop. 64. S. 57.

Calth. Readings 67. S. P.

4. If a *Steward ſhews a Court Roll to a Copyholder to prove that his Land is holden by Copy*, and the Copyholder ſays he is a Freeholder, and ſhews a Deed pretending thereby to procure his Land to be Freehold, and *tears in pieces the Court Roll*, this is a Forfeiture ipſo facto. Co. Comp. Cop. 64. S. 57.

5. A Forfeiture *is not induced by any Collateral thing*, but by ſome Act that is a Diſinheritance to the Lord and therefore an Act that makes a Forfeiture *ought to be againſt the Cuſtom*; for his Eſtate is fix'd by the Cuſtom as long as he does the Services and obſerves the Cuſtoms. Het. 7. Paſch. 3 Car. Arg. in Caſe of Paſton v. Manne.

Het. 5. Paſton v. Manne, 8. C. and the Court ſaid, it is to be preſumed, that all the Land was made better by this Incloſure if it be not expreſsly alleg'd, to be Contrary ſed adjornatur.

6. The Forfeiture of a Copyhold *is always by ſomething done to the Copyhold Land itſelf*, ſo a *Copyholder incloſing Part, where the Lord by Cuſtom claims a Fold-Courſe over the Lands* of his Copyholders, is no Forfeiture, becauſe this is *Fold-Courſe of the Lord's which is no Copyhold*, and 'tis better for the Copyhold, and makes the Land better, and more beneficial for the Lord; and this Fold-Courſe is a Thing that *Commenceth by Agreement, and it is but a Covenant and not a Common Right*, And Forfeitures (which are Odious) ſhall be takan ſtrictly for the Ld. Hutt. 102. Paſch. 5 Car. Paſton v. Utbert.

7. *Defacing of Landmarks* is a Forfeiture. Gilb. Treat. of Ten. 228.

[G. c] Forfeiture by Misfeasance; As Making Leases.

This in Roll (D.) is pl. 7. in Fol. 507.

1. IF a Copyholder leases his Copyhold for 4 Years by Parol, to commence at a Day to come, **this is a Forfeiture, though it be not in Possession, nor by Indenture, nor had been a Disseisin if such Estate had been granted by a Tenant at Will, for he hath taken upon himself to make a greater Estate than his Copyhold will support. Mich. 38, 39 Eliz. B. R. between** *East and Harding*, **per Curiam, & Mich. 40, 41 Eliz. adjudged.**

Cro. E. 498. pl. 19. S. C. and S. P. held by all Justices to be a Forfeiture where there is not any Custom to Warrant it. For he has no Authority by Law to make such Estate; And tho' this is a Lease to begin at a future Day, and the Lessee has not entred, yet it is a Forfeiture presently; for it is a good Lease between the Parties. ——— Mo. 392. pl. 508. S. C. and S. P. agreed by all that it was a Forfeiture, whether the Lesee had entred or not because it was an illegal Contract made to the Disherison of the Lord. ———Supplement to Co. Comp. Cop. 74. S. 9. cites S. C. and S. P. accordingly, tho' the Lease is good as between the Parties. —— Roll Rep. 75. Mich. 12. Jac. Coke Ch. 9. cites it adjudg'd in C. B. in Willows's Case, that a Fine of 5 l. impos'd upon a Copyholder for admitting him, the Copyhold being but of the Value of 30 s a Year, was very outragious, and consequently void. —— Gilb. Treat. of Ten. 219. cites S. C. that it is a Forfeiture, because of the unlawful Contract made to the Lord's Disherison.

2. **If a Copyholder** leases **his Copyhold to another, to have and to hold to him** for one Year, and so from Year to Year during the Life of the Lessor, reserving **to the Lessor in every Year** the 25th Day of March, **this is a * Forfeiture; for this is a Lease for two Years at least, reserving one Day; so that a greater Estate than for one Year passes in Interest, and the** Reserving a Day in every Year is but a Shift **to avoid the Forfeiture. Mich. 11 Jac. B. R. between** *Lutterel and Westover.*

This in Roll (D.) is pl. 8.

* Fol. 508.

Bulst. 215. Luttrel v. Weston S. C. adjudged accordingly. every Year, J. 308. pl. 5.

—— And Ibid. Fleming Ch J. said, that if he had reserv'd a Month at the End of it would have been all one as reserving a Day, and a Forfeiture clearly. —— Cro. S. C. adjudged per. tot. Cur. without Argument.

3. If a Copyholder that may lease for three Years **by the Custom,** leases for three Years, and so from three Years to three Years, till nine Years, **this is a Forfeiture, for this is a Lease for six Years at the least. P. 1. Jac.** *Wilcock's* **Case adjudged.**

This in Roll (D.) is pl 9.

4. **If a** Copyholder for Life agrees to make three several Leases by Indenture, **one** to commence after the other, **there being** two Days between the End of the First and the Commencement of the second, **and** so between the second and the third, **and after he makes them accordingly, and** seals them at one Time, **this is a Forfeiture, for this is an apparent Fraud, and a greater Estate than for one Year passes presently. M. 7 Car. B. R. between** *Mathews and Wheaton*, **adjudged upon a special Verdict, I my-self being de Consilio Querentis, Intratur Hill. 4 Car. Rot. 496.**

This in Roll is (D.) pl. 10. —— Cro. C. 233 234 pl. 15. S. C. adjudg'd—— Jo. 249. pl. 3. S. C. adjudged. —*Lease for a Year* and sic de Anno in Annum during the Life of the Copyholder, *excepting one Day at the End of every Year*, for the Copyholder to enter, and this only to avoid a Forfeiture, this is a Forfeitute. 1. Bulst. 215. Trin. 10 Jac. Lutterell v. Weston. — Flemming. Ch. J. said, that if he had reserved a Month at the End of every Year, it would have been all one as reserving a Day, and a Forfeiture clearly. Buls. 215 S. C. —Cro. J. 308. pl. 5. S. C. adjudg'd. —— Gilb Treat. of Ten. 218. cites S. C. and says it was adjudg'd, that the 2d. Lease was a Forfeiture; for it is not Warranted by Custom, and so being out of the Custom, it is, as every other Lease for Years, a Forfeiture; for tho' it be not to commence till after the first Lease ended, yet the Land is charged with a double Interest, one in Præsenti, the other in Futuro, which is against the Custom, and so a Forfeiture. 2dly. It was adjudged this Lease was void against the Ld. who had the Land

Land by the Surrender, and when the Ld. enters by Force of the Surrender, he is in by Title paramount the Leaſe. But it ſeems the firſt Leſſee ſhall enjoy his Leaſe, or elſe it were in the Power of the Lord to defeat his own Grant; There is nothing ſaid of this, but the Caſe in Roll is, That Leaſes were executed at one and the ſame Time, and then the Leſſee, being Particeps Criminis, may perhaps forfeit; and as the Caſe is reported by the reſt, the Leaſe was made to him to commence in Reverſion, and ſo he is as much Party to the Wrong as in the other Way; and ſo it ſeems the Ld. may enter preſently.——See (T. c) pl. 5. S. C. and the Notes there.

This in Roll (D.) is pl. 14.

5. If a Copyholder makes a Leaſe for Years by Licence of the Lord, the Leſſee may aſſign it over, or make an under Leaſe, without any new Licence, for the Intereſt of the Lord was diſcharged by the firſt Licence. P. 12 Ja. C. between *Johnſon and Smart*, per Curiam.

6. A Copyholder makes a *Leaſe* either for Life or Years of his Copyhold Lands, which is *not warranted by the Cuſtom* of the Manor; Now altho' ſuch Leaſe ſhall be a good Leaſe betwixt the Copyholder and his Leſſee, and he ſhall not avoid his own Leaſe, yet as unto the Ld. it is a Forfeiture of the Copyhold and of his Eſtate, and the Ld. ſhall take Advantage of ſuch Forfeiture, and may enter upon the Lands leaſed. Supplement to Co. Comp. Cop. 74 S. 9. cites 4 Rep. Murrel's Caſe.

7. A *Leaſe for Years* of Copyhold Lands by Indenture, *or by Parol*, is a Forfeiture unleſs there be an expreſs *Cuſtom* to warrant it, and that Cuſtom muſt be *Time out of Mind*. Cro. E. 351. pl. 3. Mich. 36 and 37 Eliz. B. R. Jackman v. Hoddeſton.

8. Copyholder made a *Leaſe for* 3 *Lives, and Livery*, and the Survivor of the 3 *continued in Poſſeſſion* 40 *Years*, but becauſe *no Livery appeared on the Deed* to have been made, it was no Forfeiture of which the King who was the Lord could take any Advantage. Godb. 269. pl. 374. Mich. 5 Jac.

But a Leaſe for one Year, and ſo De Anno in Annum during 10 *Years* is clearly a good Leaſe for 10 Years, and ſo a Forfeiture.

9. If a Copyholder makes a *Leaſe for* 1 *Year*, according to the Cuſtom, and *covenants, that after that Year ended he ſhall have another Year*, and ſo in this manner De Anno in Annum during the Space of 10 Years; this is no ſuch Leaſe as will make a Forfeiture of his Copyhold Eſtate, for that he has no lawful Leaſe here but for 1 Year only, and it is only by way of Covenant, agreed per tot. Cur. Bulſt. 190. Paſch. 10 Jac. Hamlen v. Hamlen.

Ibid. — Cro. J. 301. pl. 6. Lady v. Montague's Caſe S. C. and Same Points accordingly. — Supplement to Co. Comp. Cop. 74. S. 9. cites S. C.—Gilb. Treat of Ten. 219. cites S. C. but ſays Quære, and See the Book; For the Words *Covenant and Grant* make a Leaſe &c. but in another Caſe it was held, that theſe Words by Conſtruction might make a Leaſe where the Lands might be let; but otherwiſe where the Lands could not be let, which Diſtinction ſeems very reaſonble; for the Words themſelves do not import a Leaſe, and would be a very injurious Conſtruction to make them a Leaſe, and ſo a Forfeiture, when they only import of themſelves a Covenant. — A Leaſe, that will make a Copyholder forfeit his Eſtate, ought to have a certain Beginning and End, or elſe it is a void Leaſe, and can convey at moſt but an Eſtate at Will, which is no Forfeiture. Gilb. Treat. of Ten. 218. cites S. C. and S. P. per tot. Cur.

Supplement to Co. Comp. Cop. 74. S 9 cites S. C. but if he had been a Copyholder in Fee, it had been a Forfeiture of his Eſtate

10. A. *Copyholder for Life hath Licence of the Lord to make a Leaſe for* 5 *Years, if he live ſo long*, and *makes a Leaſe for* 3 *Years without Limitation*, yet it is no Forfeiture of his Eſtate, becauſe the Leaſe without any ſuch Limitation to the Eſtate ſhall determine by the Death of the Leſſor, and therefore not material, but *if it had been with a Limitation*, that *if J. S. had lived ſo long*, That Peradventure had been material; wherefore it was adjudged for the Plaintiff. Cro. J. 436, 437. pl. 7. Mich. 15 Jac. B. R. Worledge v. Benbury.

to have made ſuch an abſolute Leaſe, becauſe he had done more than he was licenced to do by the Law; And ſo it was adjudged in Hall and Arrowſmith's Caſe, which ſee in Popham's Rep. 185.

11. *Infant*

11. *Infant Copyholder in Fee leaſes for Years without Licence, rendring a Rent*; and *at full Age he accepts the Rent*, and after ouſts his Leſſee, who brought an Ejectione Firmæ and agreed by the Court. 1. That a Leaſe for Years by a Copyholder, although that it be a Forfeiture, yet it is no Diſſeiſin to the Lord. 2 That the Leaſe is not void but voidable, and may be affirmed by Acceptance and Judgment for the Leſſee for Years. And agreed that ſuch a Forfeiture, does not bind an Infant. Noy. 92, 93. Trin. 2. Car. B. R. Aſhfield v. Aſhfield.

Godb. 364. pl. 458. S. C. argued, ſed adjornatur. —— Jo. 157. pl. 2. S. C. adjudged, and this Judgment affirmed by all the Juſtices and Barons in the Exchequer Chamber. —— Lat. 199. S. C. agreed that it was no Diſſeiſin to the Lord, and adjudged that the Leaſe was not void, but the Leſſee had Judgment againſt the Infant.

If the Copyholder make a Leaſe it is a Forfeiture, yet it *is no Diſſeiſin to the Lord*, which is plain from the Caſes that ſay ſuch a *Leaſe is good againſt every Body but the Lord*, for it could not be a Leaſe at all if it were a Diſſeiſin; It is a Forfeiture, becauſe the Copyholder has broke the Cuſtom of the Manor, by bringing in a Tenant without any Admittance, but it is no Diſſeiſin in Favour of the Lord ſince the Copyholder hath ſuch Eſtate as may laſt much longer than the Leaſe, and not a bare Leaſe at Will. Gilb. Treat. of Ten. 217, 218.

12. A. *Copyholder for Life being indebted* 100 l. *and one P. S. being bound with him for the Debt, A. executed a Deed to P. by which he did covenant, grant, and agree with P.* &c. *that he ſhould have and enjoy his Copyhold Lands for* 7 *Years, and ſo from* 7 *to* 7 *Years, for and during* 49 *Years, if A. ſhould ſo long live, but to be void, if the ſaid* 100 l. *was paid by A.* &c. It was inſiſted, that this was not a Leaſe ſo as to entitle the Lord to a Forfeiture; the Word (Covenant) or the Words (to have, hold, and enjoy) in Caſe of Freehold will make a Leaſe, but if conſtruing it to be a Leaſe will work a Wrong, then it is only a Covenant, and no Intereſt veſts, therefore this Being in the Caſe of a Copyhold, ſhall never be conſtrued to be a Leaſe, becauſe it would work a Wrong both to the Leſſor and Leſſee, for the one would forfeit the Eſtate, and the other would loſe his Security; The Court inclin'd that it was a good Leaſe, and conſequently a Forfeiture of the Copyhold, that the Meaning of the Parties muſt make Conſtruction here, and that ſeems very ſtrong that it is a good Leaſe; but they gave no Judgment. 2 Mod. 79. Paſch. 28. Car. 2. C. B. Richards v. Seely.

(H. c) Forfeiture. Making Leaſes exceeding the Licence.

1. LORD grants a *Licence* to his Copyholder to *grant a Leaſe for* 20 *Years* from Michaelmas next, and the Copyholder *makes a Leaſe to C.* and afterwards (but before Michaelmas) makes *another Leaſe to B. for* 21 *Years* each by Indenture; the Juſtices doubted, if making the ſecond Leaſe be a Forfeiture, but Anderſon Ch. J. thought it a Forfeiture. Mo. 184. pl. 329. Mich. 26 Eliz. Anon.

The Juſtices ſaid, that the ſecond Leaſe is *void in Intereſt, and good by Eſtoppel*, but if the Lord being a Stranger to the Eſtoppel may affirm this Leaſe againſt the Leſſor is the Doubt. Ibid. —— Sed Quære, for the Leaſe was void in Point of Intereſt, and only worked by way of Eſtoppel betwixt the Parties, and if no Intereſt paſſed, how could it be a Forfeiture; yet had the firſt Leaſe been ſurrendered, the ſecond Leaſe would have taken Effect, and then the Land had been charged with a Leaſe without Licence, but till that happened the Land was charged with nothing in Point of Intereſt, and this *not like the Caſe of a future Leaſe*, for there the Land is bound preſently, and tho' this may happen to be a Charge, yet the *Suppoſition is foreign*, and ought not to be intended to work a Forfeiture. Treat. of Ten. 220.

2. Lord *licences his Tenant* to make Leaſes for 21 *Years*, Tenant makes 2 Leaſes to two ſeveral Perſons for the Term, if the Lord may affirm the 2*d Leaſe* againſt the Leſſor is a Doubt. Mo. 184. pl. 329. Mich. 26 Eliz. Anon.

This proves that the Heir is in by Deſcent, and not by his Admittance; he may have Treſpaſs, Ejectment, or may ſurrender before Admittance.

3. There is a Difference between a Copyholder in Fee and a Copyholder for Life, for if the Lord *licences* his Copyholder in Fee to make a Leaſe *for* 3 *Years*, *if he live* ſo long, and he makes a Leaſe abſolutely, this is no Forfeiture; for this Leaſe ſhall be a good Intereſt againſt the *Heir* of the Copyholder, but otherwiſe of a Copyholder for Life and in both Caſes the Condition is void, and the Leſſee is in by the Copyholder, and not by the Lord. Ow. 73. Hill. 38 Eliz. B. R. *Haddon v. Arrowſmith.

Arg. 3 Lev. 327 in Caſe of Glover v. Cope.——*Poph. 105. S. C. reports this Point juſt Vice Verſa, viz. that a Leaſe ſo made by Copyholder in Fee abſolutely where the Licence was limited, had been a Forfeiture, becauſe he did more than he was licenced to do; but a Leaſe ſo made by Copyholder for Life makes no Forfeiture, and they agreed, that ſuch a Licence cannot be made void by Condition ſubſequent to undo that which was once well executed, but there may be a *Condition precedent* united to it, becauſe in ſuch Caſe it is no Licence till the Condition is performed, but the Licence before mentioned is not a conditional Licence, but a *Licence with a Limitation*, and therefore had not been of Force if the Limitation which the Law makes in this Caſe had not been, and the Limitation in Law is preferable to a Limitation in Deed, where they work to one and the ſame Effect, and not different. Hall v. Arrowſmith, S. C. —— If *Copyholder for Life hath Licence to let for* 3 *Years* if he ſo long lives, and he leaſes for 3 Years abſolutely, it is no Forfeiture of his Eſtate; but otherwiſe in Caſe of a *Copyholder in Fee*. Poph. 105. Hill. 38 Eliz. Hall v. Arrowſmith.——Gilb. Treat. of Ten. 280. cites S. C. & S. P. accordingly, but ſays it is otherwiſe had the Copyholder had a Fee and the Limitation had been during the Life of a Stranger. ——The Words (if he lives ſo long) are but to ſhew how long the Leaſe is to continue, which is no more than what the Law appoints, and ſo it is good enough, and they are but Words of Surpluſage and no more than † what the Law ſays, and if they had been inſerted in the Leaſe it would have been in vain; had it been in the Caſe of a Copyholder in Fee it had not been warranted by the Licence, for then the Intent would be to give him Licence, but *not to hurt the Heir, and without thoſe Words in the Leaſe the Heir ſhould be bound, and the Leaſe good*; but it is otherwiſe of a Copyholder for Life, for the Law without thoſe Words determines the Leaſe by his Death. Cro. E. 461. 462. pl. 8. S. C.

† S. P. But if it had been with a Limitation, *if J. S. had lived ſo long*, that perhaps had been material. Cro. J. 437. in Caſe of Worledge v. Benbury.

[I. c] Forfeiture by making a Grant &c. as at Common Law.

'This in Roll (D) is pl. 11. in Fol. 508. —If a Copyholder *bargains and ſells by Deed indented and inrolled* 'tis

1. IF a Copyholder bargains and ſells the Copyhold to another in Fee, and after the Deed is not inrolled, yet this is a Forfeiture, for it would have determined a Leaſe at Will, being made by a Leſſee at Will. Contra M. 38 39 Eliz. B. R.

no Forfeiture of his Copyhold, of which the Lord can take any Advantage. Godb. 269 pl. 374. Mich 5 Jac. in the Exchequer, cites it to have been ſo adjudged in London's Caſe.——Supplement to Co. Comp. Cop. 76. S. 10. cites S. C. accordingly; becauſe the Copyhold did not paſs by the Deed.——And in that Caſe it was cited to be adjudged in London's Caſe, that if a Copy-Tenant doth bargain and ſell his Copy-Tenement by Deed indented and inrolled, that the ſame is no Forfeiture of the Copyhold of which the Lord can take any Advantage; And ſo it was holden in this Caſe. Godb. 269. pl. 374. Mich. 5 Jac. Anon.

This in Roll (D) is pl. 12.——If he makes a Charter of Feoffment, or a Deed of Demiſe for Life, but makes no Livery, this is no Forfeiture, becauſe nothing paſſes, and therefore no Alienation, but otherwiſe it is of a Leaſe for Years. Co. Litt. 59. a. ——Gilb. Treat. of Ten. 220. cites S. C. and ſays, that by a Leaſe for Years an Intereſt paſſes by

2. So if a Copyholder makes a Deed of Feoffment with a Letter of Attorney to make Livery, though Livery be not made accordingly, yet this is a Forfeiture.

by the Delivery of the Deed, and therefore it is a Forfeiture.——Gilb. Treat. of Ten. 320. cites S. C.

3. But otherwiſe it ſeems it is if it be without a Letter of Attorney, for it reſts in him at all Times to perfect it, and ſo his Will is not perfected till it is done. Mich. 38, 39 El. B. R. Co. Lit. 59. as it ſeems it is to be intended. This in Roll D) is pl 13.—— S P. by Clench. J.

3 Le. 109.——Gilb. Treat. of Ten. 320. cites S. C——It was adjudg'd in the Exchequer, that where the King was Lord of a Manor, and a Copyholder within the ſaid Manor made a Leaſe for 3 Lives, and made Livery, and afterwards the Survivor of the 3 continued in Poſſeſſion 40 Years; And in that Caſe, becauſe that no Livery did appear to be made upon the Endorſement of the Deed, (altho, in Truth there was Livery made) that the ſame was no Forfeiture of which the King ſhould take any Advantage. Godb. 269. pl. 374. Mich. 5 Jac. Anon.

4. Entry en le Poſt againſt an Abbot, who ſaid that his Predeceſſor leas'd the Tenements to the Demandant, Habendum at Will, by Copy, who enfeoff'd the Demandant, by which the *Abbot enter'd for Alienation to the Diſinheritance of his Houſe*, and admitted for a good Bar, by which the Demandant ſaid, that his Grandfather was ſeiſed in Fee, abſque hoc that the Predeceſſor leaſed Prout &c. Br. Entre en le Per pl. 33. cites 11 H. 4. 83.

5. A *Surrender by Tenant for Life to* the Uſe of *another in Fee*, is not any Forfeiture, for it paſſes by Surrender to the Lord, and not by Livery. 4 Rep. 23. a. pl. 4. Paſch. 35 Eliz. B. R. in Caſe of Bullock v. Dibley. Mo. 753. pl. 1037. Hill. 1 Jac. S. P. —— Supplement to Co. Comp.

Cop. 76. S. 10. cites S C. but ſtates it, that beſides the Surrender he made Livery of the Land, and that it is no Forfeiture for the Reaſon above.——Such Surrender in Fee is no Forfeiture, becauſe the Surrenderee comes in by Admittance, and the Lord hath diſpenſed with him. Cart. 238. per Cur. Hill. 26 & 27 Car. 2. C. B. Bird v. Kirkby. ——Gilb Treat. of Ten. 178. cites Bullock v. Dibley, that it is no Forfeiture; For it may be ſeen by the Court Rolls who is Tenant, and ſo the Stranger is at no Loſs to ſue.

6. Tenant by Copy cannot *alien* his Land by Deed, for then the Lord may enter as into a Thing forfeited to him. Litt. S. 74. But when a Man has but a Right to a Copyhold, he may *releaſe* it by Deed or Copy to one that is admitted Tenant de facto. Co. Litt. 59. a.

7. The making of a Deed alone, unleſs *ſome Thing paſs thereby* is no Forfeiture; As if he make a Charter of *Feoffment*, or a Deed of Demiſe for Life, and makes *no Livery*, this is no forfeiture; becauſe nothing paſſes, and therefore no Alienation; But otherwiſe 'tis of a *Leaſe for Years*. Co. Litt. 59. a.

8. If a *Copyholder for Life ſurrenders in Fee* this is no Forfeiture, becauſe it did not paſs by Livery. Co. Comp. Cop. 64. S. 57.

9. If a *Copyholder for Life ſuffers a Recovery* by Plaint in the Lord's Court *as Copyhold of the Inheritance*, this is a Forfeiture ipſo facto. Co. Comp. Cop. 64. S. 57. A. *Tenant for Life of a* Copyhold, Remainder to B. in Fee.

A. *ſuffers a Common Recovery.* Reſolv'd per tot. Cur. that without a particular Cuſtom this is no Forfeiture of the Eſtate, but if it be, it is the Lord and none elſe that can enter. 2 Mod. 33. Paſch. 27 Car. 2. C B. in Caſe of Kren v. Kirby.——Cart. 237 Bird v. Kirkby, S. C. & S. P. held accordingly per tot. Cur.—Freem. Rep. 192. pl. 196. Kirby's, alias, Kirk's Caſe S. C. ſays it was conceived, that the ſuffering a Recovery in Fee was a Forfeiture of the Eſtate for Life; but that the Lord ſhould hold it during the Life of him that committed the Forfeiture.——Mod 199. pl. 31. Bird v. Kirk S. C. & S. P. held accordingly; For the Freehold not being concern'd, and it being in a Court Baron where there is no Eſtoppel, and the Lord who is to take the Advantage of it, if it be a Forfeiture, being Party to it, it is not to be reſembled to the Forfeiture of a Free Tenant, and that Cuſtomary Eſtates have not ſuch accidental Qualities as Eſtates at Common Law have, unleſs by ſpecial Cuſtom.——Gilb. Treat. of Ten. 220. cites S. C. but ſays it was otherwiſe adjudged in the Caſe of Bird v. Keck Ideo Quære.

10. If

10. If a Copyholder makes a *Feoffment of all his Lands in Dale*, and makes Livery in Charter Lands; no Part of his Copyhold Land is thereby forfeited; But *if Livery be made in any Part of the Copyhold Land*, all his Copyhold Lands are forfeited. Co. Comp. Cop. 65. S. 58.

11. If a Copyholder *by* Deed of *Bargain and Sale inrolled* according to the Statute, *doth bargain and sell all his Land in Dale*, having both Copyhold and Freehold, his Copyhold is not thereby forfeited; For the Law will construe this to extend to his Freehold only, rather than by any over large Construction make a Forfeiture in this Kind. Co. Comp. Cop. 65. S. 58.

12. If a Copyholder *by Deed inrolled bargains or sells all his Copyhold Lands in Dale, or all his Lands* in Dale *generally, having no Freehold Lands*, this is a Forfeiture. Co. Comp. Cop. 65. S. 58.

13. If a Copyholder makes a *Bargain and Sale* of his Copyhold, and it is *not inrolled* according to the Statute, this is no Forfeiture, no more than a *Feoffment without Livery*, because nothing passes. Co. Comp. Cop. 64. S. 58.

14. If a Man *grants a Farm by Name, and all his Lands &c. usually held occupied therewith*, and it happens that some of the Lands are Copyhold, this will not be a Forfeiture; per Cowper. Ch. G. Equ. R. 14. Hill. 7 Ann. in Case of Oxwith v. Plummer.

[K. c] Forfeiture by Waste.

This in Roll (D) is pl. 15 in Fol. 508.

1. **If a Copyholder** commits Waste against the Custom **of the Manor, this is a Forfeiture. Co.** 4. 27. *Clifton's Case*, **admitted.** —— If a Copyholder commits Waste voluntary or permissive, this is a Forfeiture ipso facto. Co. Comp. Cop. 64. S. 57. —— Voluntary; As if he pulls down any ancient built House, or if he builds any new House, and then pulls it down again; or if he plows Meadow, so that thereby the Ground is made worse, or lops the Trees, or sells the Lopping; or if he cuts down any Fruit-Trees for Fuel, having other Wood sufficient; these and the like voluntary Wastes are Forfeitures ipso facto. Co. Comp. Cop. 64. S. 57.

This in Roll (D) is pl. 16. —— Cro. E. 598. pl. 3. S. C. but the Point was for burning an Out-house; Adjudg'd a Forfeiture. —— Suffering the House to be ruinous is a Forfeiture, admitted per Cur. 1 Salk. 186. pl. 5. Trin. 10 W. 3. C. B. Eastcourt v. Weeks.

2. **If the Copyholder** suffers the House to decay, **and be wasted, this is a Forfeiture. Tr.** 39 **El. B. R. between** *Rastell and Turner*, **admitted. Co. Lit.** 63.

The Defendant in Ejectione Firmæ pleaded, that the Lord of the Manor did enter into the Land of a Copyholder by reason of Forfeiture *for Waste* committed, *by suffering the Houses to be uncovered, by which the Timber is become rotten*, and did *not allege in facto that the Custom of the Manor is, that such Waste is a Forfeiture*; for it was said, that although other Waste by the Common Law is a Forfeiture, yet this *permissive* Waste is not; sed non allocatur; for all Waste done by a Copyholder is forfeitable. Ow. 17, 18. Trin. 36 Eliz. B. R. Downingham's Case. —— Permissive; As if he suffers his House to decay or fall to the Ground for want of necessary Reparation; or he suffers his Meadow, for want of mending his Banks, to be surrounded, so that it becomes rushy, or worth nothing; or his arable Ground so to be surrounded, that it is become unprofitable; These, and the like permissive Wastes, are Forfeitures ipso facto. Co. Comp. Cop. 64. S. 57.

This in Roll (D) is pl. 17. —— S. P. as by cutting Trees, or if another who occupies by Sufferance of Copyholder cuts them, this is a Forfeiture of the Copyhold.

3. **If a** Stranger commits Waste **upon the Copyhold**, without the Assent of the Copyholder **himself, this is not any Forfeiture of the Estate of the Copyholder. Co.** 4. 27. *Clifton's Case* **agreed.**

Copyhold. Mo. 49. pl. 149. Paſch. 5 Eliz. Anon. —— Dal. 49. pl. 12. S. C. in totidem Verbis. —— Gilb. Treat. of Ten. 221. ſays it ſeems no Forfeiture, becauſe it is not the Copyholder's Act; and ſays, that Ld. Coke in numbring permiſſive Waſte does not reckon the Waſte done by a Stranger; And that it is ſo reſolv'd in **Clifton's Caſe**, but that if the Husband commits Waſte in the Lands of the Wife, it is a Forfeiture; and ſays, that it ſeems every Forfeiture ought to be the wilful Act of the Copyholder, ſo as it may amount to a Determination of his Will.

4. **If a** Copyholder cuts down great Trees, (**ſcilicet, Elms,**) to repair his Copyhold Houſe, **which is** in Decay, and employs them accordingly, **this is not any Forfeiture, becauſe the Law allows it to him,** without any Cuſtom **to warrant it. M. 38, 39 Eliz. B. R. between** *Eaſt and Harding*, **per Curiam agreed and adjudged.**

This in Roll (D) is pl. 18. —— If a Copyholder cuts down Trees without a ſpecial Cuſtom for it, it is a Forfeiture by the Common Law; Per Gawdy and Popham, becauſe it is to the Lord's Diſinheritance; but per Popham, if it be found that he did it for Reparation of the Houſe, whereby it is made better, there peradventure it is otherwiſe. Cro. E. 292. pl. 3. Hill. 35 Eliz. B. R. the S. C. —— Ibid. 499 pl. 19. S. C. the Court as to this Point were not all agreed, whether it was a Forfeiture or not, in regard it was found that he cut them for Reparations, and that they were neceſſary for that Purpoſe. —— Mo. 392. pl. 508. S. C. and the Juſtices agreed, that the cutting the Trees, if not employ'd upon Reparations, is a Forfeiture, no Cuſtom being the one way or the other.

5. So **if a Copyholder** cuts down two great Trees (**ſcilicet, Elms,**) to repair **his Copyhold Houſe, which is in Decay,** and employs one of them accordingly, and leaves the other ready **to be employed, though he had cut down more than would ſerve his Turn for the preſent, yet this is not any Forfeiture, for a Man cannot preciſely know what will be ſufficient. Mo. 38, 39 El. B. R. between** *Eaſt and Harding*, **per Curiam. Et 40 & 41 El. adjudged.**

This in Roll (D) is pl. 19. —— Cro. E. 499. pl. 19. S. C. & S. P. by Gawdy and Fenner accordingly. —— Mo. 393. pl. 508. ſays the Court took it, that the making Reparations with it, though it was five Years after the Cutting, and after the Entry for the Forfeiture, and the Action brought is a Diſpenſation with the Forfeiture, becauſe Timber ought to be ſeaſoned before it is employed. —— Ow. 63. S. C. but S. P. does not appear. —— Gilb. Treat. of Ten. 221. cites S. C.

6. [But] **if a Copyholder** cuts Trees **to repair his Houſe,** and **after** does not employ them accordingly, but ſuffers them, **after the Cutting,** to be putrified **and rotten, this is a Forfeiture. M. 38 & 39 El. B. R. by Clinch.**

This in Roll (D) is pl. 20. —— Mo. 392. pl. 508. the firſt Reſolution in S. C.

7. If there be no Cuſtom to the contrary, *Waſte*, either *permiſſive or voluntary*, of a Copyholder, is a Forfeiture of his Copyhold. Co. Litt. 63. a.

It is now ſettled, that *permiſſive* Waſte is a Forfeiture; Per Powell J. Lutw. 803. Trin. 11 W. 3. —— Voluntary Waſte is a Forfeiture by the Common Law, but *negligent Waſte* is not without a Cuſtom. Noy 51. by Anderſon and Walmſley, Mich. 37 & 38 Eliz. C. B. Farmer v. Ward.

8. It was ſaid by Hobart, that a Copyholder *may hedge and incloſe, but not where it was never incloſed before*, and agreed by him and Warburton, that a Copyholder may *dig for Marle* without any Danger of Forfeiture, *but he ought to lay the ſaid Marle upon the ſame Copyhold Land*, and not upon other Land. Winch. 8. Paſch. 19 Jac. in Paſton's Caſe.

Gilb. Treat. of Ten. 310. cites S. C. & S. P. and ſays it ſeems to him that a Copyholder of Inheritance cannot, without a ſpecial Cuſtom, *dig for Mines*; neither can the Lord dig in the Copyholder's Lands, for the great Prejudice he would do to the Copyhold Eſtate; And the Copyholder himſelf ſeems to have no Intereſt in the Inheritance of the Lands. —— Sid. 152. pl. 20. Trin. 15 Car. 2. B. R. the S. P. as to Mines, Obiter, but left a Quære. —— S. P. per Cur. Obiter. Hetl. 8. in S. C.

The Caſe cited out of Lat. is miſprinted and ſhould be Lat. 227.

9. A *Copyholder ſuffered a Houſe to fall*, and *repaired* it; yet held to be a *Forfeiture*, and it is *not like to Waſte at Common Law*, for there if it be repaired before the Jury hath View, it is well enough; Skin. 211. in Pool and Archer's Caſe, cites Lat. 277. & Palm. 417.

Mich. 3 Car. Cornwallis v. Horwood, or Hammond. —— Palm. 417. Paſch. 1 Car. B. R. the S. C. but I do not obſerve S. P.

10. *Pulling down a ruinous Houſe* is a Forfeiture, unleſs there is a Cuſtom to the contrary, becauſe *Waſte lies not againſt a Copyholder*, and yet the Lord in favour may *amerce* ſuch a Copyholder if he will. Arg. Het. 6. Paſch. 3 Car. C. B.

Gilb. Treat. of Ten. 221. cites S. C. accordingly. —— Hetl. 8. in Caſe of Paſton v. Manne S. C. cites the Opinion of Popham D. 361. pl. 12. 30 Eliz. that it is not Waſte. —— Hutt. 103. in S. C. cites D. 361. Altham's Caſe.

11. *Meliorating the Land in other kind*, as turning it into Hop-Ground is a Forfeiture, but digging or improving it in the ſame kind it not; Agreed by all. Litt. R. 267. Paſch. 5 Car. C. B. in Caſe of Paſton v. Utbert.

Gilb. Treat. of Ten. 221. cites S. C. accordingly;

12. *Converting part of the Land into Piſchary* by a Copyholder is a Forfeiture; Per Hutton J. and it was not denied. Litt. R. 268. Paſch. 5 Car. C. B.

[L. c] Forfeiture by Building, or Incloſure.

This in Roll (D) is pl. 6. in fol. 507.—

Gilb. Treat. of Ten. 221. cites S. C. accordingly; but ſays that then it ſeems that this

1. IF a Copyholder erects a new Houſe upon a Copyhold without Licence, this is no Forfeiture, for this is for the Improvement of the Tenement, though he alters the Nature of the Land by it; and this is not Waſte in the Leſſee for Years. Paſch. 38 Eliz. B. R. between *Cecill and Cave.*

Houſe muſt be ſubject to all the Cuſtoms of Copyhold Land; and therefore if he pulls it down again it is a Forfeiture. —— Litt. Rep. 266. Arg. cites 8 Jac. B. R. Brooke v. Bee, where a Copyholder built a new Houſe upon Part of the Land, and it was adjudg'd a Forfeiture; For though the Land is better, yet it is in another Kind, and cites 22 H. 6. that if Leſſee alters his Houſe, and makes it bigger, and takes Timber for it, it is Waſte; but it was reſolv'd there, that if he betters the Land in the ſame kind it is no Forfeiture or Waſte. —— Hutt. 103. Arg. ſays that it was adjudg'd in Brooks's Caſe at the firſt coming of Popham to be Chief J. that building a new Houſe is a Forfeiture, becauſe it alters the Nature of the Thing, and puts the Lord to more Charges.

So where a *Tenant for Life built* a new Houſe where none

2. A Woman Copyholder *built a new Houſe* upon the Land, and it was agreed to be a Forfeiture. 4 Le. 241. pl. 393. in Ward's Caſe cites Hill. 8 Jac. Anon.

was before, and without laying 4 Acres of Freehold Land to it, and ſo within the Statute of Cottages, and after his Death *Reverſioner pulled it down*, this is a Forfeiture. Bulſt. 50. Mich. 8 Jac. adjudg'd. Brock v. Beare. —— If a Copyholder builds a Houſe, but it is *not covered*, it is no Forfeiture to *pull it down*, for till it is covered it is not a Houſe; per Fenner J. Bulſt. 50. ——— S. P. by Popham Ch. J. Poph. 14.

Het. 5. S. C. but no Judgment.

3. A Copyholder may *hedge* and *incloſe*, but not where it was never incloſed before; Winch. 8. Paſch. 19 Jac. cites it as ſaid by Hobart in Paſton's Caſe.

Per Doderidge J. Lat. 123. in Caſe of Gray v. Uliſſes S. P.

4. If Copyholder *erects a Mill* upon his Freehold it is a Forfeiture. D. 211. b. Marg. pl. 13. cites [Trin. 1 Car. Gray v. Ulyſſes.] ——— If a Mill be ſet upon Poſts no Waſte lies for it; adjudged. 4 Le. 241. pl. 393. Paſch. 8 Jac. B. R. Ward's Caſe.

5. *In-*

5. *Incloſure* of Land with Gaps in which the *Lord has a Fold-Courſe* for 500 Sheep is not a Forfeiture; for it is a Thing *collateral to the Land*, and a Forfeiture of a Copyhold is always by ſome Thing done to the Copyhold Land itſelf, and this Fold-Courſe is a Thing which commences by Agreement, and is but a Covenant, and not a Common Right, and Forfeitures are odious in the Law, and ſhall be taken ſtrictly, and all the Court were of Opinion, that this is no Forfeiture. Hutt. 103. Paſch. 5 Car. Paſton v. Utbert.

Hetl. 5. Paſton v. Manne S C. argued. The Court ſaid, that it is to be preſumed, that all the Land was bettered by this Incloſure, unleſs it be expreſsly ſhewn to the contrary; Sed adjornatur.——Litt. Rep. 264. S. C. reſolved.——Gilb. Treat. of Ten. 227, 228. cites S. C. that becauſe there was a Cuſtom to Fine for ſuch Incloſure it is no Forfeiture; but if there had been no Cuſtom to Fine it ſeems it is a Forfeiture, becauſe there is no other Remedy.

(M. c) Forfeiture. By Crimes. Conviction, Attainder &c.

1. IF a Copyholder be *Outlawed or Excommunicate*; that the Lord may have the Profits of his Copyhold Land, a Preſentment is neceſſary. Co. Comp. Cop. 64. S. 58.

2. The *Cuſtom* of a Manor was, that *if a Copyholder commits Felony and it be preſented by* 12 *Homagers*, that the Tenant ſhould forfeit his Copyhold; ſuch Preſentment was made againſt A. but afterwards *at the Aſſiſes A. was acquitted*; the Lord ſeiſed the Copyhold; it was adjudged no good Cuſtom, becauſe in Judgment of Law, before Attainder it is not Felony. Godb. 267. pl. 370. Hill. 6 Jac. C. B. Pagington alias Packington v. Huet.

Supplement to Co. Comp. Copyholder, 84. S. 19. S. C. accordingly. —— Bulſt. 13. Hill. 7 Jac. Gitting v. Cooper. S. P. and ſeems to be S. C. and as to the firſt Point adjuded clearly a good Cuſtom, viz. that if any Copyholder commits Felony, he ſhall forfeit to the Lord his Copyhold, and that the Lord upon Preſentment of this by the Homage may enter and ſeiſe the ſame, but whether the Verdict and Acquittal ſhould conclude the Lord of his Entry the Court deliver'd no Opinion, but Curia adviſare Vult, and the Parties ſubmitted the Matter to Williams J.——2 Brownl. 217. S. C. accordingly.——Gilb. Treat. of Ten. 227. cites S. C.

3. Another Point was, whether the *ſpecial Verdict, agreeing with the Preſentment of the Homage*, that A. had committed Felony, did intitle the Lord to the Copyhold notwithſtanding his acquittal, Quære; for it was not reſolved. Godb. 267. pl. 370. Hill. 6 Jac. C. B. Pagington alias Packington v. Huet.

4. Copyholder *convict of Felony has Clergy* allowed *before Attainder*; the Court inclined ſtrongly that it is no Forfeiture without *ſpecial Cuſtom*, but on the Importunity of Counſel it was appointed to be argued again. Lev. 263. Hill. 20 & 21 Car. 2. B. R. Jory v. Pawley.

Conviction of Felony and Preſentment thereof by the Jury was held a Forfeiture of the Copyhold Eſtate, there being a Cuſtom found, that the Lord may ſeiſe. Le. 1. Borneford v. Packington.—— S. C. cited Lev. 263. and diſtinguiſhed the Caſe there from this Caſe of Jory v. Pawly, becauſe there was a *Cuſtom found* which was not found here.

5. An *Outlawry of Felony* is an Attainder, and in Caſe of Copyholds the *Land goes to the Lord*, and not to the King, and the Cuſtom is good Cauſe to ſeiſe, but ſhall enſue the Trial of the Fact, and on Acquittal is diſcharged. Per Keeling Ch. J. to which the Crown agreed. 2 Keb. 466, 467. pl. 51. Hill. 20 & 21 Car. 2. B. R. in Caſe of Jory v. Pawly.

Lev. 263. S. C. but S. P. does not appear.

6. By Attainder of Felony the Copyhold Eſtate for Life is abſolutely determined, ſo that afterwards the Perſon attainted *is no Copyholder* nor

nor can be of the *Homage*, or *take a Surrender out of Court*. 2. Jo. 189, 190. Hill. 33 & 34 Car. 2. B. R. Beniſon v. Stroud.

Skin. 8, 9. pl. 9. S. C. Pemberton Ch. J. held, that Entry was not material, but that the Eſtate would be in the Lord preſently without ſeiſure. Curia adviſare vult.——3 Lev. 94. Strode v. Denniſon S C adjudg'd that the Eſtate for Life was determin'd by the Attainder, the Copyhold being only a Tenancy at will, the Attainder determines his will, and tho' the Lord does not enter, and the King Pardonsthe Felony, yet he in Reverſion for Life may enter. Adjudg'd in B. R. and affirm'd in Cam. Scacc.——2 Show. 150. pl. 133. Benſon v. Strode S. C. Adjornatur.

7. In Caſe of Attainder of Copyholder for Life *Preſentment* is only for Inſtructions of the Lord, but he may enter before any Preſentment 2 Jo. 189, 190. Hill. 33 & 34 Car. 2. B. R. Beniſon v. Stroud.

8. It ſeems, if a Copyholder *commits Felony or Treaſon, he forfeits to the Lord, without any particular Cuſtom*, elſe a Felon would have no Puniſhment in his Poſterity, if he had Copyholds of never ſo great Value. Coke in one Place ſays, if a Copyholder commits Felony or Treaſon, he forfeits his Copyhold preſently; in another Place he ſays he forfeits upon Preſentment; and in a 3d place he ſays the Lands eſcheat to the Lord. In none of theſe Caſes he mentions any Cuſtom, but ſpeaks generally; It is a Forfeiture preſently before Indictment or Attainder, as it ſeems, becauſe the Cuſtom will not in favour of a Felon, ſupport an Eſtate at Will, but let the Lord determine it, as in Caſe of any other Eſtate at Will, the Law will not give his Eſtate to the King, becauſe then the Lord would loſe his Services. Gilb. Treat. of Ten 226, 227.

[N. c] Forfeiture by Non-Feaſance; Not coming in on what Summons or Notice. And how Advantage may be taken of it.

This in Roll (C.) is pl. 7. in Fol. 506. * Roll Rep. 429. pl. 21. S. C. adjudged. ——3 Bulſt. 268. Hammond v. Wemibank. S. C adjudg'd. & S. P. per Cur. ——3 Bulſt. 80. Belfield v. Adams S. C. & S. P. admitted.

1. **If a Copyholder makes a voluntary and** obſtinate Abſtraction of his Suit from the Court of the Lord upon ſufficient Warning, **this is a Forfeiture; My Reports, 14 Ja.** * *Buttevant and Pickſtaff* **adjudged. M. 13 Ja. B. R. between** † *Southcot and Adams*, **per Curiam.**

† Roll Rep. 256. pl. 24. S. C.

This in Roll (C.) is pl. 6. Fol. 507. Cro. E. 505. in pl. 30.

2. **If the Lord gives a** particular Summons **to every particular Copyholder,** that he will hold a Court at a certain Place, at a certain Time, **if any of them do** not come at the Day, **this is a Forfeiture. 23 Eliz. Sir** *Chriſtopher Hatton's* **Caſe adjudged; cited P. 38 Eliz. B. R. in** *Criſp and Frier's* **Caſe.**

Criſp v. Fryer cites S. C. againſt his Tenants of Wellingborough, and S. P. agreed there per Cur.—Mo. 350. pl. 468. S. C. & S. P. cited, but ſays not whether the Summons was particular or General.—Noy 58. S. C. & S. P. cited.——Sty. 241. cites S. C. —— S. P. admitted per Cur. 3 Bulſt. 80. Mich. 13 Jac. ——Ibid. 268, 269. S. P. admitted per Cur. —— But in Sir Chriſtopher Hatton's Caſe it was agreed that if he could excuſe his not coming upon any good Cauſe as Sickneſs &c. it ſhould ſave the Forfeiture. Cro. E. 506. ——Gilb. Treat. of Ten. 215. S. P. and ſays that if a Copyholder be in Debt, and is afraid of being arreſted, or is a Bankrupt, and keeps Houſe, theſe are good Excuſes.

3. But

3. But otherwise it is upon general Summons, for there perhaps the Tenant never had Notice thereof. 23 El. Sir Christopher Hatton's Case, held M. 5 Jac. B. between *Farrer and Woodhouse*, per Curiam, upon a general Summons in the Church, according to the Custom. Coke's Entries 288. between *Taverner and Crumwell*, adjudged, where a general Summons in the Church without alleging a Custom to summon a Court in the Church. This in Roll (C.) is pl. 8. —— *Refusal eo perform Services*, or a wilful *Absence from Court*, are Causes of Forfeiture, but in the last Case the *Summons ought to be* Personal, or at his House, or it ought to be *averred that he had Notice*, and 4 Day's Notice was held sufficient, though Walmsley thought there ought to be 14. Cro. E. 553. pl. 10. Mich. 36 & 37 Eliz. C. B. Taverner v. Ld. Cromwell.——Godb. 142. pl. 176. Hill 36 Eliz. Anon. seems to be S. C. & S. P. per tot. Cur. and to that Purpose was cited the Case of Ld. Dacres v. Harleston ——Le. 104. pl 139. Mich. 30 Eliz. B. R. Braunch's Case, held per tot. Cur. that general Warning within the Parish is sufficient; for if the Tenant himself be not resiant upon his Copyhold, but elsewhere, his Farmer may send Notice of the Court to him. ——Non-appearance at Court after Summons is a Forfeiture of the Copyhold, but without Warning it is no Forfeiture, but only Negligence; and after Summons it is a Forfeiture without an express Refusal, as in Case of Rent; for the Consequence is more fatal in this Case, because without the Copyholder's Attendance there can be no Court. Gilb. Treat. of Ten. 215.——And Ibid. says, that the Opinion that there must be a Personal Notice is most reasonable; for as 4 Days Notice has been adjudg'd a sufficient Time of holding a Court, how can a Copyholder be summon'd in that Time that lives 200 Miles off?

4. If a Copyholder dies, his * Heir *within Age*, the Heir is not bound to come to any Court during his Nonage to pray Admittance, or to tender his Fine; *And if the Death of his Ancestor be not presented, nor Proclamations made, he is not at any Mischief, though he be of full Age*; per Cur. Le. 100 pl. 128. Pasch. 30 Eliz. B. R. in Case of Rumney v. Eves. S. P. 3 Le. 221. pl. 294. Pasch. 30 Eliz. B. R. Anderson v. Hayward. S. C in totidem Verbis.

—— 4 Le. 30. pl. 84. S. C. in totidem Verbis.——Gilb. Treat. of Ten. 216. cites S. C.
* This is alter'd by Statute 9 Geo. 1. Cap. 29. which See.

5. If a Man be so weak and *feeble that he cannot travel without Danger*, or if he *hath a great Office* &c. these are good Causes of Excuse. Arg. Le. 104. pl. 139. Mich. 30 Eliz. B. R. in Sir John Braunch's Case. S. P. cited by Popham Cro. E. 506. in pl. 30. to have been agreed 23 Eliz. in Sir Chr. Hatton's Case against the Tenants of Willingborough.——Gawdy J. said, if the Copyholder be impotent the Lord may set a Fine upon him, and if he will *not pay the Fine* it is reason that he should forfeit his Land. Le. 104. pl. 139. Mich. 30 Eliz, B. R in Sir John Braunch's Case.

6. An *Attorney appointed by the Copyholder* cannot do the Services for him, but he may *essoin* the Copyholder. Le. 104. pl. 139. Mich. 30 Eliz. B. R. Sir John Braunch's Case. Supplement to Co Comp. Cop. 83. S. 18. ad finem cites S. C. & S. P. accordingly.

7. The *Summons of a Copyholder to appear at the Lord's Court was made at the Church*; the Copyholder did not appear; all the Court held, that this was not any Cause of Forfeiture, because it was *not specially shewed to be the Custom* to make such Summons, and it would be hard to make it a Forfeiture; for perhaps he had no Notice of it, therefore it *ought to be Personal Notice*, for his Refusal must be wilful to make a Forfeiture, and cited the Case of Ld. Dacres v. Harleston to the Purpose. Godb. 142. pl. 176. Hill. 36 Eliz. C. B. Anon. Supplement to Co. Comp. Cop. 75 S. 10. cites S. C. —— Le. 104. pl. 139. Mich. 30 Eliz. B. R Sir John Braunche's Case, the whole Court held, that *general Warning within the Parish* is sufficient; for if the Tenant himself be not resiant upon his Copyhold, but elsewhere, his Farmer may send him Notice. —— Cro. E. 505, 506 in pl. 30. Popham cited 23 Eliz. S. P. agreed by all the Justices in Sir Christopher Hatton's Case, against his Tenants of Wellingborough, and the same was agreed by the Court Mich 38 & 39 Eliz. in the principal Case.

Cro. E 879. pl. 10 Paſch. 44 Eliz. B. R. the S. C. adjudg'd accordingly.

8. Surrender to A. for Life, Remainder to B. in Fee. A. *comes not in on* 3 *Proclamations* according to the Cuſtom, this is a Forfeiture during the Life of A. but on his Death B. may enter. Noy 42. Baſpool v. Long.

—— Yelv. 1. S. C. the Eſtate of A. and B. are divided Eſtates, and the Cuſtom ſhall be intended of an intire Fee-ſimple given to the ſame Perſon; and the Cuſtom being to bar an Eſtate ſhall be taken ſtrictly. Quære, if ſuch Surrender is made to A. and B. and their Heirs, and A comes in within the Time of the Proclamations, but B. does not, whether if now A. ſhall have the whole, or that the Moiety ſhall be forfeited?

9. If he be *hindred by Sickneſs*, or be *overflowing of Waters*, *or* if he be *much in Debt*, *and fear to be arreſted*, *or* if he be a *Bankrupt and keeps his Houſe*; then his Default is no Forfeiture. Co. Comp. Cop. 63. S. 57.

Cro J. 226, 227. pl. 1. Underhill v Kelſey, S. C. and held by 4 Juſtices, that it was no Forfeiture, but Crooke J. e contra;

10. Forfeiture was by an *Heir beyond Sea not coming in at the third Proclamation*; after 20 Years the Heir returned, prayed Admittance, and proffered his Fine, but the Lord refuſed. Adjudged that it was no Forfeiture, the Heir being beyond Sea at the Time of the Proclamation made, and becauſe the Lord was at no Prejudice ſince he receiv'd the Profits of the Lands in the mean Time. Godb. 268. pl. 371. Mich 7 Jac. C. B. Anon.

Williams J. ſaid, that the Lord is at no Miſchief, but may ſeize in the Interim, and take the meſne Profits, without being reſponſible for them. —— 8 Rep. 99. Lechford's Caſe, S. C. adjudg'd. —— S. P. by 3 Juſtices; but it was agreed by the Counſel of the Defendant, that if he had gone over Sea after the Deſcent to him he had been bound. Cro. J. 101. pl. 32. Mich. 3 Jac. B R. Whitton v. Williams. —— Gilb. Treat. of Ten. 216, 217. cites S. C. ſays, that if ſuch Heir be within England at the Time of the firſt Proclamation paſſed, and then go beyond Sea, he ſhall forfeit, for he had Warning, and ought to have come in, and not have diſabled himſelf from making Claim; But if he had gone beyond Sea after the Deſcent, and before the firſt Proclamation, this had been no Forfeiture, for at the Time of the Court he is to make Claim; ſed Quære; and Gilbert likewiſe makes a Quære as to the Lord's being anſwerable for the Profits. Ibid.

8 Rep. 99. a. Sir Richard Lechford's Caſe, S. C.

11. The *Cuſtom* of a Manor *was*, *that thoſe who claimed Copyholds by Deſcent ought to come at the 1ſt*, *2d*, *or 3d Court*, *upon Proclamations made*, *to take up their Eſtates*, *or elſe they ſhould be forfeited*. A Tenant of the Manor having *Iſſue* inheritable by the Cuſtom, *beyond the Sea*, died; the Proclamations all paſſed, and the Heir did not return in two Years, but *upon his Return he prayed to be admitted to the Copyhold*, *and proffered the Lord his Fine in Court*, which the Lord refuſed to accept of, and to admit the Heir, but ſeiſed the Land as forfeited. It was adjudged in this Caſe, that it was no Cauſe of Forfeiture, becauſe the Heir was beyond the Seas at the Time of the Proclamations, and the Lord was at no Prejudice, for that, for any thing appeared in the Caſe, the Lord had taken all the Profits of the Land in the mean Time. Supplement to Co. Comp. Cop. 84. S 19. Hill. 7 Jac. C. B. Copley's Caſe.

3 Bulſt. 80. Belfield v. Adams, S. C. & S. P. agreed. But refuſing or denying to do his Suit is a Forfeiture.

12. Where a Copyholder in Fee *withdraws his Suit to the Lord's Court*, *and does not attend for* 3 *Years*, if he *was never ſummoned to attend*, this is only a Negligence, and no Forfeiture; but if he had been warned to attend, and afterwards had refuſed, it had been a Forfeiture; agreed per tot. Cur. Roll Rep. 256. pl. 24. Mich. 13 Jac. B. R. Southcote v. Adams.

—— Supplement to Co. Comp. Cop. 75. S. 10. cites S. C.

Roll Rep. 429. pl. 21. Buttevant v. Pickſtaff. S. C. and

13. A Copyholder was *ſummoned to appear at Court*, *and to do and perform his Suit and Services* as a Copyhold Tenant &c. He made Default. The *Declaration was*, *that Sectam voluntarie & contemtuoſe ſubſtraxit*, *& illam facere recuſavit*, *and that on ſuch a Day Notice was given to him by the*

the Bailiff of the Manor to appear, *but did not ſay by the Command of the Lord.* The Court held clearly, that here is ſufficient Matter of Forfeiture of his Copyhold, and that the Declaration is good, and Judgment accordingly. 3 Bulſt. 268. Mich. 14 Jac. Hammond v. Winnibank.

though it was objected, that *the Court was not alledg'd to be held in the uſual Place,*

and if ſo, that then Peradventure the Tenant was not bound to come to it, and that the Manor may contain ſeveral Houſes, and ſo the Place uncertain, yet Judgment was given for the Plaintiff —Supplement to Co. Comp. Cop. 75. S. 10. cites S. C. as adjudg'd.

14. If the *Heir* of a Copyholder *does not come in* to be admitted *upon Proclamations*, the *Lord may ſeize the Land Quouſque* the Tenant comes in to be admitted, without any Cuſtom ſo to do, *but to ſeize it as forfeited he cannot without a Cuſtom*; Reſolv'd. Lev. 63. Paſch. 14 Car. 2. B. R. Earl of Salisbury's Caſe.

Keb. 287. pl. 98. S. C. alias, Pateſon v. Danges, the Lord may ſeiſe without

Cuſtom or Perſonal Notice; and the Court agreed, the Caſe of Cock v. Lee, that one ſaying he would come in if the Lord had a Court, otherwiſe not, that this is no Forfeiture; but yet the Lord on ſuch Refuſal might ſeiſe Quouſque.

15. A Queſtion was, *Whether in the Proclamation* for the Heir to come in and be admitted *there ought to be a particular Mention of the Lands* by Name, as they are named in the Copy, or whether a general Proclamation to come in and be admitted to all the Lands of his Anceſtor be ſufficient? This was intended to be found ſpecially, but afterwards the Parties agreed in Court. Lev. 63. Paſch. 14 Car. 2. B. R. Earl of Salisbury's Caſe.

The Proclamation was, that J. S. come in and be admitted to the Lands deſcended to him. In Ejectment the Certain-

ty of the Lands were before declar'd, and therefore Windham J. held it ſufficient, unleſs the Cuſtom be contrary, and not like a Demand of Rent, which being generally of ſo much, as is in arrear, is ill; Quod fuit conceſſum per Cur. the Cuſtom of the Court being to *demand it generally and not to ſpecify the Lands.* Keb. 287. pl. 98. Paſch. 14 Car. 2 B. R. Pateſon v. Danges, alias, Lord Salisbury's Caſe.

16. *Proclamations* whereby the Lord claims Forfeiture of a Copyhold *ought to be prov'd Viva Voce*, and not by the Court Rolls only; held in Evidence to a Jury. Keb. 287. pl. 98. Paſch. 14 Car. 2. B. R. Pateſon v. Danges, alias, Ld. Salisbury's Caſe.

17. The *Lord upon Seiſure* of a Copyhold *may maintain Ejectment till the Heir comes in to be admitted*; Agreed per Cur. Keb. 287. pl. 98. Paſch. 14 Car. 2. B. R. Pateſon v. Danges, alias, Lord Salisbury's Caſe.

18. It is a good *Cuſtom that a Copyholder ſhall be diſcharg'd of Suit* to Court Baron *upon Payment of* 8 *d. to the Steward for the Lord, and* 1 *d. to the Steward for entring it.* Sid. 361. pl. 5. Paſch. 20 Car. 2. B. R. Portbury v. Legingham. But See Tit. Suit of Court (D.) S. C. pl. 4. and the Notes there.

Gilb. Treat. of Ten. 306. cites S. C. and ſays it is good, if he *avers there are Copyhol-*

ders ſufficient to keep Court that live near the Manor, or elſe ſurely the Cuſtom will be void; for then no Court can be held. As this Caſe is reported by Siderfin, it is ſaid it was held a good Cuſtom, becauſe the Court was a Court Baron, where the Suitors are Judges, but it ſeems to me to be all one; for that if it were a cuſtomary Court, if ſufficient Copyholders were near the Manor, it is unreaſonable to oblige Perſons that live a great way off to attend; and if the Court be a Court Baron, if there be not a ſufficient Number of Tenants that live near the Manor, to do the Duty, then Copyholders are obliged to do it in that Court as well as Freeholders, and therefore it ſeems the Cuſtom cannot be good, for no Court can be held.

19. There hath been generally practiſed in moſt Copyhold Manors, that upon the *Mortgage* of a Copyhold the Mortgagor ſurrenders into the Hands of two cuſtomary Tenants to the Uſe of the Mortgagee, upon Condition to be void if the Money be paid at ſuch a Day; now to avoid

avoid the Fine to the Lord the *uſual Way is, not to preſent the Surrender at the next Court, but* after the Court is over *to make a new Surrender* into the Hands of two cuſtomary Tenants, ut ſupra *and ſo from Time to Time*, as often as any Court ſhall be holden, which *Non-preſentment* is at Law a Forfeiture and to be relieved againſt this Forfeiture was a Bill exhibited, which North Lord Keeper denied to help, but left them to Common Law: Skin. 142. pl. 13. Mich. 35 Car 2. in Chancery, Anon.

20. 9 *Geo.* 1. *Cap.* 29. *S.* 5. *No Infant or Feme Covert ſhall forfeit any Copyhold for Neglect, or Refuſal to come to any Court, and be admitted; or for the Omiſſion or Refuſal to pay any Fine impoſed on their Admittance.*

[O. c] *Forfeiture.*
What will be a Forfeiture.
Nonfeaſance.
[Refuſal of Services.]

This in Roll (C.) is pl. 1. in fol. 506.— * Paſch. 4 Eliz. Anon. held by 3 Juſtices.

1. IF a Jury or Homage of the Manor, after a Note made to preſent the Articles of the Court, refuſe to make a Preſentment according to their Oath, if the are Copyholders, this is a Forfeiture of their Eſtates. * D. 4 Eliz. 211. 31.

——Supplement to Co. Comp. Cop. 75. S. 10. cites S. C. and ſays, that it was ſo reſolved by both the Chief Juſtices in the Starr-Chamber in the Earl of Arundel's Caſe.——S. P. by Gawdy J. Mo. 350. in pl 468.——Gilb. Treat of Ten. 217. S. P.——Co. Comp. Cop. 63. S. 57. S. P. and that it is a Forfeiture ipſo facto.——If a Copyholder being with the other Copyholders charged upon Oath to enquire of the Articles of the Court Baron, and ſufficient Matter being given to them in Evidence to induce them to find a *Matter within their Charge*, and they or any of them *obſtinately refuſe to find the ſame*, 'tis a *Forfeiture* of their Copyhold, 3 Le. 109. pl. 158. Trin. 26 Eliz. B. R. ſaid to have been adjudged, in Caſe of Southton v. Thurſton.

This in Roll (C. a) is pl. 5. in Fol. 506.

2. If the Copyholder does not pay the Services due to the Lord, this is a Forfeiture. 42 E. 3. 25. 6. admitted.

—Br. Tenant by Copy &c. pl. 1. cites S. C. and the Lord may ſeiſe the Land; admitted for clear Law. ——4 Rep. 21. b. S. C. cited per Cur. and that the Lord ſhall have the Corn then growing.

S. C. cited Arg. as Paſch. 16 Eliz. by the Name of Vernon v. Huggins. Lat. 133.

3. If upon a Demand of Services the *Tenant ſays, theſe Services which you require are doubtful whether you ought to have them or no, and until it be reſolved by the Law whether they are due I will not pay them.* Arg. Lat. 14. ſays it was adjudged to be no Forfeiture Paſch. 26 Eliz. between Barnham and Higgens.

and Crew Ch. J. ſaid, It is a Queſtion, if Copyholder denies to do Services which are dubious, whether this be a Forfeiture?——— Gilb. Treat. of Ten. 216. S. P.——Calth. Reading. 67. S. P.

Co. Comp. Cop. 63. S. 57. S. P. and this is a Forfeiture ipſo facto.

4. *Refuſal to be upon the Homage* is a Forfeiture; per Gawdy J. Mo. 350. pl. 468. Trin 35 Eliz. in Caſe of Criſp v. Fryer.

Lat 123. S. P. by Doderidge J. in S. C.

5. If the Lord demands *Suit to his Mill*, and Tenant *refuſes*, it is a Forfeiture. D. 211. Marg. pl. 31. cites Trin. 1 Car. B. R. Rot. 633. Gray v. Ulyſſes.

6. If

6. If a Copyholder be *demanded to do his Services, and he agrees to do them, but did not* do them *for a long Time*, this is a Forfeiture; per Damport and Crew. Lat. 122. Trin. 1 Car. in Caſe of Grey v. Uliſſes, and cited 43 E. 3. 5.

7. If a Copyholder *does not come to do his Services*, yet *if he be often demanded to do them, and ſtill defers*, and puts off the Time of doing them, tho' he does not abſolutely refuſe, yet it ſeems this makes a Forfeiture. Lat. 14. Paſch. 2 Car. Johnſon's Caſe.

8. In Treſpaſs &c. The Caſe was, that the Defendant being Lord of a Manor, and holding Court, and the Plaintiff being a Copyholder, and preſent in Court, *and there being a Queſtion, whether the Court was legally then held, or not*, and *he being asked if he did appear or not, anſwered, that if it was a legal Court he did appear, but if it was not* a lawful Court, *then he did not appear*; Adjudged that this was no Contempt, or Non-appearance, ſo as to make a Forfeiture. Roll Ch. J. thought if there was no real Controverſy as to the Legality of the Court, but that the Words were uſed only as a ſhift to avoid the Plaintiff's doing Suit and Service, it is a Forfeiture; but otherwiſe, if there was a real Controverſy. And the other 3 Juſtices inclined that it was no Forfeiture. Et adjornatur. Sty. 241. Hill. 1650. Parker v. Cook.

Gilb. Treat. of Ten. 216. cites S. C. according to Roll Ch. J.

[P. c] Forfeiture. Refuſing to pay a Fine.

1. **If a Copyholder** refuſes to pay his Fine for Admittance **after it is due, this is a Forfeiture. Tr. 4 Jac. B. R between** *Fiſhe and Rogers*, **agreed. * Hoberts Reports** 183. **between** *Denny and Leman*. If there be a Demand thereof from the Perſon **of the Tenant, otherwiſe not.**

This in Roll (D.) is pl. 2. in Fol. 507. — * Hob. 135 pl. 182. Hill. 13. Jac.

C. B. the S. C. — Supplement to Co. Comp. Cop. 75. S. 10. cites S. C — See (C. a) pl. 3. and the Notes there.

It was ſaid, that if a Copyholder *refuſe to pay a reaſonable Fine, or to be admitted* to the Copyhold, this is a Forfeiture of his Eſtate. Sty. 387. Mich. 1653. B. R. Fanſhaw v. Bond. — If the Lord upon the Admittance of a Copyholder, the *Fine by the Cuſtom* of the Manor *being certain*, demands his Fine, and the Copyholder denies to pay it upon demand, this is a Forfeiture ipſo facto. Co. Comp. Cop. 64 S. 57. cites 4 Rep. 27. b. Hobart v. Hammond.

2. **If the** Lord aſſeſſes an unreaſonable Fine **upon his Tenant, and the** Copyholder refuſes to pay **it, this is a Forfeiture, P. 36 Elir. B. between** * *Taverner and the Lord Crumwell* **adjudged, cited Paſch. 38 Eliz. B. R. in** *Criſp's Caſe*; **it ſeems this is not Law; Et vide this Caſe, Coke's Entries** 288. **where no ſuch Matter appears to have been in the Caſe. Contra 1 Jac. B. Rot.** 185. **between** † *Stallon and Brady*, **adjudg'd (as it ſeems) cited Co. Lit. 60.**

This in Roll (D) is pl. 3. — * Cro. E. 353. pl. 10. S. C. but S. P. does not appear. — 4 Rep. 27 a. b. pl. 15. S C but S. P. does not appear. — 3 Le. 107. pl. 158. S. C. but S. P. does not appear. — 4 Rep. 27. b. 28. a. pl. 16. Mich. 42 & 43. Eliz. B. R. Hubard v. Hammond S. P. reſolv'd Contra, viz. that he may deny to pay it without Forfeiture and it ſhall be determined by the Opinion of the Juſtices before whom the Matter depends, or upon Demurrer, or upon Evidence to a Jury upon the Confeſſion or Proof of the Annual Value of the Land, whether the Fine demanded was reaſonable or not. — Cro. E. 779. pl. 13. Dalton v. Hammond S. P. accordingly, held per Cur. and ſeems to be S. C. — Supplement to Co. Comp. Cop. 74, 75. S. 10. S. P. — Co. Comp. Cop. 64. S. 57 S. P.

† 13 Rep. 1. Mich. 6 Jac. C. B. Willowes's Caſe, ſeems to be S. C. & S. P. admitted.

This in Roll (D) is pl. 4. — See pl 2 and the Notes there.

3. But if after the Fine impoſed, the Tenant intreats the Lord to mitigate the Fine, and after he refuſes it, the Refuſal of the Tenant after to pay this unreaſonable Fine is a Forfeiture, Paſch. 36 El. B. in *Taverner and the Lord Crumwell's Caſe* agreed; it ſeems this is not Law. Et vide this Caſe, Coke's Entres 288. where no ſuch Queſtion appears in the Caſe.

This in Roll (D) is pl. 5 in fol. 507. — The Court ſeem'd, that a Copyholder's refuſing to pay a Fine in a dubious Matter, is not ſuch an obſtinate and wilful Refuſal as will incur a Forfeiture. 3 Lev 309. Trin. 3 W. & M. in C. B. Barnes v Corke. —— But where the Fine is certain he ought to tender it, but contra where it is uncertain; for the Lord ought to aſſeſs the Fine and admit him, and give him a convenient Time to pay it. —— Cro. E. 779. pl. 13. Mich. 42 & 43 Eliz. B.R. Dalton v. Hammond and if he pays it not, then the Lord to enter.

4. If the Lord aſſeſſes a Fine where the Fine is not certain, and the Tenant refuſes to pay it, though this be after adjudged to be a reaſonable Fine, yet this is not any Forfeiture, becauſe it was dubious to the Tenant, and Matter of Controverſy between Lord and Tenant, whether it was reaſonable.

5. Were a Fine is *denied after Admittance* it is a Forfeiture of the Copyhold, cited by Popham Ch. J. 4 Rep. 28. a. in pl. 16. Mich 42 & 43 Eliz. as adjudg'd in Sands's Caſe, and that it was ſo reſolv'd by Wray and Periam, Juſtices of Aſſiſe in Evidence to the Jury in Caſe of Bacon v. Flatman.

Cro. E 779. pl. 13. S. C. & S. P. — 4 Rep. 27. b. pl. 16. Hubbard v Hammond S C. & S. P. ——— Supplement to Co. Comp. Cop. 75 S. 10. S. C. & S. P. ——— Gilb. Treat of Ten. 205. cites S. C. and 13 Rep. 3. [Willows's Caſe]

6. If the *Lord demands* an *Exceſſive Fine*, and the *Copyholder refuſes to pay it*, this is no Forfeiture, but otherwiſe where a reaſonable Fine is demanded. Mo. 622. pl. 851. Mich. 42 & 43 Eliz. Dalton v. Hammond.

7. If the *Fine* by the Cuſtom of the Manor be *uncertain*, tho' a reaſonable Fine be aſſeſſed, yet becauſe no Man can provide for an Uncertainty, the Copyholder is not bound to pay it preſently upon demand, but ſhall have convenient Time to diſcharge it, *if the Lord limit no certain Day for Payment* thereof; *and if within convenient Time it be not diſcharged*, this is a Forfeiture without Preſentment. Co. Comp. Cop. 64. S. 57.

Supplement to Co. Comp. Cop. 75. S. 10 cites S. C. ——— Gilb. Treat. of Ten. 205. cites S. C.

8. Though a *Fine aſſeſs'd* be reaſonable, yet the *Lord ought to appoint a certain Day and Place* on which it ſhould be paid, becauſe it ſtands upon a Point of Forfeiture of the Eſtate, and the Copyholder is not tied to carry his Fine always with him; per Cur. 13 Rep. 2 Mich. 6 Jac. Willows v. Willows.

but a *Fine certain he muſt pay preſently upon Admittance.*

2 Brownl. 270. Rivet v. Downs S. C. & S. P. admitted.

9. The Lord *may diſtrain* the Copyholder for the Services *or ſeiſe* the Land. Noy 135. Mich. 7 Jac. Rivet v. Doe.

10. Upon Demurrer it was adjudged, that the *Lord* was *not bound to aver, or ſhew that the Fine aſſeſs'd was reaſonable*, for that muſt come on the Copyholder's Side to ſhew the Circumſtances of the Caſe, to make it appear that it was unreaſonable, and ſo to put it upon the Judgement of the Court. Hob. 135. pl. 182. Hill. 13 Jac. C. B. Denny v. Leman.

Gilb. Treat. of Ten. 313. cites S. C.

11. The *Lord aſſeſſed a Fine of 12 l. and appointed it to be paid at his Manor-houſe 3 Months afterwards*, but the *Copyholder pretending that the*

the Fine was certain, viz. 2 Years Quit-Rent, offered to pay accordingly on the Day when the other Fine was aſſeſſed, but on the Day appointed by the Lord for Payment he came not to the Place to excuſe his Nonpayment, nor made any other Refuſal; the Court held that this was a Forfeiture, but if he had come at the Day and Place aſſign'd, and tendred the 2 Years Quit-Rent, being the Fine certain due, according to the Cuſtom, though not the Fine aſſeſs'd and demanded by the Lord, it had been no Forfeiture. Cro. J. 617. pl. 1. Mich. 19 Jac. B. R. Gardiner v. Norman.

12. H. was a Copyholder of the Manor of L. and upon his Admittance the *Lord in open Court aſſeſſed 2 Years Purchaſe for a Fine, and appointed him to pay it within half a Year. H. replied, he would pay 3 Years Quit-Rent for the Fine, according to the Cuſtom, and that the Tenants are not to pay an uncertain Fine.* Afterwards the Lord entred for a Forfeiture, for not paying the Fine he had aſſeſſed, and brought Ejectment. It ſeemed to the Court, that if there was a *Real Doubt*, whether the Fine was certain or not, the denying to pay an uncertain Fine is no Forfeiture, though found afterwards that the Fine ought to be certain; but that ſuch Doubt ought to be real, and *not covenous*. Raym. 41. Mich. 13 Car. 2. B. R. Wheeler v. Honour.

Sid. 58. pl. 26. S. C. but not upon the S. P. ——Gilb. Treat of Ten. 275. cites S. C. and ſays it ſeems to him that if upon Demand the Heir refuſes to pay the Fine it is a Forfeiture.

13. The Defendant was admitted Tenant to a Copyhold, and a Fine of 8 l. ſet upon him, payable at three ſeveral Payments, a third part of which being Perſonally demanded, and he refuſing to pay it, the Lord brought an Ejectment to recover the Lands as Forfeited; the Reaſon why he refuſed to pay it was, becauſe *upon a Survey of the Manor, in the Reign of Queen Elizabeth, by Virtue of a Commiſſion directed to ſome Men of Credit, and by the Conſent of the Lord of the Manor, and his Tenants, a Decree was then made by the Court of Chancery, by which the Fine was aſcertained, according to the Value of the Lands at that Time, and which was a Year and half's Value upon Deſcents, and 2 Year's on an Alienation*, and this was to be binding for ever. The *Queſtion was, How the Years Value ſhould now be computed*, whether as at that Time, or according to the improv'd Value, and the Tenant refuſing to pay according to the *improv'd Value*, but being willing to pay as it was ſet in the Reign of Queen Elizabeth, upon the Survey by the Commiſſioners, this Ejectment was brought. Lord Ch. Baron held, that if it be a Doubt, and the Tenant gives a probable Reaſon, to make it appear that no more is due than what he is ready to pay, it is no Forfeiture, and the Doubt being whether it ſhall be paid according to the computed or inproved Value, he inclined that the Action would not lie. The Court were Doubtful in the Matter, and upon the whole thought it a proper Caſe for Equity, and ſo directed a Juror to be withdrawn, which was done. 2 Mod. 229. Paſch. 29 Car 2. in Scacc. Trotter v. Blake.

[Q. c] Forfeiture. Nonpayment of Rent.

This in Rol Letter (C) is pl. 2 in Fol. 506. ——Co. Comp. Cop. 64. S. 57. S. P. that it is a Forfeiture Ipso Facto.

1. **If a Copyholder be to pay a certain** Rent **yearly by his Copy to his Lord, and the Lord comes upon the Land, and demands his Rent at the Day, and the** Copyholder being present refuses to pay **it, this is a Forfeiture. Pasch. 2 Jac. B.**

This in Roll (C.) is pl 3. ——* Cro. E. 505. pl. 30. S. C. Popham v. Gawdy held this a Forfeiture, but Fenner e contra. Adjornatur.——Mo. 350. pl. 468. S. C and Popham and Gawdy held, that this Voluntary Negligence for so long a Time [viz. for 2 Years before, as Cro. E. states it] implies a wilful Refusal, and is a Forfeiture.——Noy 58 S. C. held accordingly by Popham and Gawdy, but Fenner e contra.——Supplement to Co. Comp. Cop. 74. S. 10. cites S. C. and says, that the better Opinion of the Court seem'd to be, that it was a Forfeiture ; But says Quære of it ; For it was resolv'd in another Case, Trin. 21 Jac. C. B. that Non-payment of Rent, or of the Fine upon Admittance to his Copyhold was no Forfeiture of his Copyhold Estate, unless there was some express Verbal Denial of it, which there was not in this Case.——S. C. cited Gilb. Treat. of Ten. 211, 212.

† Hob. 135. pl. 182. S. C. held accordingly, both for Rent and Fine.——Supplement to Co. Comp Cop. 75. S. 10. cites S. C.

2. If **a Copyholder be** absent when the Lord demands the Rent at the Day, **and no Body is there to pay it, which is a Refusal in Law, yet this is not any Forfeiture, for this does not amount to a voluntary Refusal. Dubitatur, P. 38 Eliz. B. R. between** * *Crisp and Frier.* **P. 2 Jac. B. † Hobert's Reports** 183. And *Denny and Lemon*, **there** ought to be a Demand from the Person of the Copyholder **to make a Forfeiture.**

Lat. 122. Trin. 1 Car. in Case of Gray v. Ulisses S. P. ruled accordingly. But because the Lord upon such Excuse ordered him to pay it at his House such a Day (which House was within the Manor) the Non-payment then will amount to a wilful Refusal and a Forfeiture ; But if the Place which the Lord had assigned had been out of the Manor, Failure of Payment there would be no Forfeiture.——S. C. cited Gilb. Treat of Ten. 213, 214.

3. **If a Copyholder be present at the Time of the Demand of the Rent, and** saith that he hath not his Rent ready, **this is no Forfeiture, for the** Lord may distrain. **P. 2 Jac. B.**

4. If the Rent be *demanded of the Tenant* himself, and he says nothing; per Popham and Gawdy J. this *Silence and Nonpayment* is a Forfeiture. Noy. 58. cites 42 E. 3. 5. in Case of Crispe v. Fryer.

5. Popham Ch. J. held that Nonpayment of Rent, if the *Demand was after the Day of Payment*, was no Forfeiture ; But per Fenner J. many Defaults of Payment may be deemed a Forfeiture. Goldsb. 143. pl. 59. Hill. 43 Eliz. Anon.

If the Copyholder says that he wants Money to discharge the Rent, and therefore *intreats the Lord to forbear until he be better provided*, unless the Lord gives his consent, this Nonpayment is a Forfeiture ipso facto ; for a Copyholder knowing his Day of Payment is to provide against the Day ; But if the Lord comes upon the Copyholder's Ground, and demands his Rent, and neither the Copyholder himself, nor any other by his Appointment, is there present to answer the Demand, though this be a Denial in Law of the Rent, yet this is no Forfeiture. Co. Comp. Cop. 64. S. 57.——But if the Lord continues in making demand upon the Ground, and the Copyholder is still absent, this continual Denial in Law amounts to a Denial in Fact, and makes the Copyholder's Estate subject to a Forfeiture without Presentment. Co. Comp. Cop. 64. S. 57.

6. If *Rent* be *demanded of a Copyholder, who replies he had no Money*, this is not a Forfeiture, for the Denial ought to be a wilful Denial. Godb. 142, 143. pl. 176. Hill. 36 Eliz. C. B. cited per Cur. to have been adjudg'd in one Winter's Case.

7. If

7. If a Copyholder will *ſwear in Court that he is none of the Lord's Copyholder*, this is a Forfeiture ipſo facto. Co. Comp. Cop. 63. S. 57.

8. If a Copyholder will ſue a Replevin againſt the Lord upon the Lord's lawful Diſtreſs for his Rent or Services, this is a Forfeiture ipſo facto. Co. Comp. Cop. 64. S. 57.

Reſcous and Replevin are Forfeitures of Copyhold Land becauſe they amount to wilful Refuſals. Gilb. Treat. of Ten. 228.

9. Where the *Eſtate of a Lord of a Manor ceaſes by Limitation of an Uſe, and* the Uſe and Eſtate thereof is *transferr'd to another, who demands Rent of a Copyholder, and he refuſes to pay it*, 'tis no Forfeiture of the Copyhold, without *Notice given to the Copyholder of the Alteration of the Uſe and Eſtate.* 8 Rep. 92. a. cited per Cur. as adjudg'd Hill. 1 Jac. Beconſhaw v. Southcot.

Gilb. Treat of Ten. 214. cites S. C.——*So if a Bargain and Sale be of a Manor by Deed indented and inroll'd*, the Bargainee ſhall not take Advantage of a Forfeiture without Notice, cited as adjudg'd and affirm'd per Cur. for good Law. 8 Rep. 92. b. ——— It ſeems the Law is the ſame concerning *Leaſe and Releaſe*, but if the Manor be in Poſſeſſion of the Lord himſelf, and not in the Hands of any Leſſee, and he makes a Leaſe, and then releaſes, the Leſſee having Poſſeſſion, Quære if the Copyholder denies paying, if this is not a Forfeiture, becauſe the *Entry of the Leſſee* is Notice as much as Livery &c. Gilb. Treat. of Ten. 214.

10. A Feme *Widow Copyholder knew not how to pay her Rent*, and ſeveral came for the Rent, but *ſhe put them all off with dilatory Anſwers. At laſt came a Young Gallant and demanded it; ſhe anſwer'd, that ſhe did not know him, but if he would dance before her, if ſhe liked his Dancing ſhe would pay it.* Cited by Harvey J. as a Caſe which he knew in Queſtion; And Fenner J. doubted if this Denial was a Forfeiture, but adjudg'd that it was not, becauſe it was not a wilful Denial. Litt. Rep. 267, 268. Paſch. 5 Car. C. B.

Gilb. Treat. of Ten. 114. cites S. C. as adjudg'd no Forfeiture.

(R. c) Forfeiture. By what Perſons. Infant, Non compos &c.

1. A Man *Non ſanæ Memoriæ*, an Ideot, or a Lunatick, though they be able to take a Copyhold, yet they are unable to forfeit a Copyhold, becauſe they want common Reaſon, nay common Senſe. Co. Comp. Cop. 65. S. 59.

2. So an *Infant* that is *under the Age of* 14 is unable to forfeit his Copyhold, becauſe he wanteth Diſcretion, and till then he is to be in Ward to the next of Kindred, to whom the Inheritance cannot deſcend, or to the Lord, or the Bailiff of the Manor, as the Cuſtom ſhall warrant. Co. Comp. Cop. 65. S. 59.

But an *Infant at the Age of Diſcretion* may forfeit his Copyhold, not by Offences which proceed from Negligence or Ignorance, but by ſuch as proceed from Contempt. Co. Comp. Cop. 65. S 59.

3. A *Feme Covert* by an Act ſhe can do of herſelf, cannot poſſibly forfeit her Copyhold, becauſe ſhe is not ſui Juris, ſed ſub poteſtate Viri: But if ſhe do any Act which amounts to a Forfeiture by the Conſent of her Husband, this is in her a Forfeiture. Co. Comp. Cop. 65. S. 59.

4. If *Ceſtuy que Uſe* of a Copyhold commits Waſte, he ſhall not forfeit his Copyhold. Co. Comp. Cop. 65. S. 59.

5. If an *Infant comes not in to be admitted*, according to the Cuſtom, at three ſolemn Proclamations made at three ſeveral Courts, or if he will ſuffer his Houſes to go to ruin, or his Ground to be ſurrounded, theſe Acts, ſavouring of *Negligence* only, are no Forfeitures. Co. Comp. Cop. 65. S. 59.

6. So if an *Infant* Copyholder *ſues a Replevin* againſt the Lord upon a Diſtreſs lawfully taken, or if he aliens by Deed, or the like, theſe Acts reliſhing of Ignorance only, are no Forfeitures. Co. Comp. Cop. 65. S. 59.

7. *But* if he *denies from Time to Time to pay the Lord the Rent*, or *commits voluntary Waſte*, notwithſtanding often *Warning given him* by the Lord, theſe Acts proceeding from Malice and Contempt are Forfeitures; And ſo if he commits Felony or Treaſon. Co. Comp. Cop. 65. S. 59.

Comb. 118. King v. Illiſon, S. C. but the Court being divided it was adjourned. —— Carth. 41 S. C. and Judgment in C. B. affirmed in B R. by 3 Juſtices, contra Holt Ch. J. —— Lutw. 765, 769. S. C. in C. B. and Judgment was there given by Opinion of the whole Court for the Defendant.

8. In Ejectment it was found by a ſpecial Verdict, that the *Cuſtom* of a Manor *was*, That *if on a Surrender preſented, and three Proclamations, the Surrenderee comes not to be admitted, the Lord ſhall ſeiſe as forfeited. Surrenderee died; three Proclamations were made*; his *Heir, an Infant, did not come in*; the Lord ſeiſed. Holt Ch. J. held the Infant was bound; becauſe otherwiſe the Lord would loſe his Fine; and it is not the Forfeiture of the Infant, but of the Surrenderor in whom the Eſtate continues till Admittance; and that if it be a Forfeiture it is ſo only Quouſque. But Dolben, Eyre, and Gregory contra. Cuſtom ſhall not be intended to reach Infants; and by Eyre, if it had been found expreſsly, that all Perſons, Infants, as well as others &c. he had been bound; for as Cuſtom makes his Inheritance, it may abridge it, and the Lord cannot be ſaid to loſe a Fine, for he has a Tenement and no Fine due, nor Occaſion of Admittance, and here is no Room to ſuppoſe a temporary Forfeiture, for the Jury have found the Cuſtom to be of an abſolute Forfeiture, nor is the Infant within the Cuſtom, for as found, it is, that if the Perſon to whom the Surrender is made comes not, the Bailiff of the Manor may, by Command of the Lord, ſeiſe ſuch Tenements as forfeited. In Error on a Judgment in C. B. which was affirmed. 1 Salk. 386. pl. 1. Hill. 1 W. & M. King v. Dilliſton.

1 Show. 31. S. C. argued, and Ibid 83. S. C. argued by the Judges, and Judgment affirm'd, by the Opinion of three Judges, contra Holt Ch. J. —— 3 Mod. 221. S. C. with the Arguments of the Judges, and Judgment affirmed by three Juſtices, contra Holt Ch. J.

(R. c. 2) Forfeiture. By whom. One not in Poſſeſſion.

Supplement to Co. Comp. Cop. 75. S. 10. cites S. C. —— Gilb. Treat. of Ten. 227. cites S. C. and ſays, though the Cuſtom was if a Copyholder be convicted of Felony, yet it ſeems Conviction is not neceſſary; but if the Thing will bear it, it is good to lay a Cuſtom.

1. CUſtom of a Manor, that if a Copyholder be *convicted of Felony it is a Forfeiture*, and that the Widow has Frank-bank, and that the Heir ſhall not be admitted to the Copyhold during the Life of his Mother. The *Widow having her Frank-Bank, the Heir commits Felony*, which is preſented by the Homage, *and dies, leaving a Son*, the Eſtate is forfeited (notwithſtanding the Frank-Bank) as to the Heir of the Felon. Le. 1. pl. 1. Hill. 25 Eliz. C. B. Bornford v. Packington.

2. If

2. If a *Copyhold* be *ſurrendred to the Uſe of J. S. and before Admittance J. S commits Waſte*, this is no Forfeiture; for by the ſame Reaſon that he cannot grant before Admittance, he cannot forfeit before Admittance. Co. Comp. Cop. 65 S. 59.

3. If a *Diſſeiſor* of a Copyhold *commits Waſte* this is no Forfeiture. Co. Comp. Cop. 65. S. 59.

4. If two *Jointenants* be of a Copyhold, *and one commits Waſte*, he forfeits his Part only; for no Man can forfeit more than he hath granted. Co. Comp. Cop. 65 S. 59.

5. If there be *Tenant for Life with Remainder over* of a Copyhold, and the *Copyholder for Life purchaſes the Manor, commits Waſte*, or does any Act which amounts to the Extinguiſhment, or the Forfeiture of a Copy, yet the Remainder is not hereby touched. Co. Comp. Cop. 65. S. 59.

6. If a *Copyhold* be *granted to three habend'. ſucceſſive*, where by the Cuſtom of the Manor this word Succeſſive takes Place, *the firſt Copyholder cannot prejudice the other two by any Act* he can do, no more than if a Copyholder in Fee by Licence makes a Leaſe for Years by Deed, or without Licence by Copy, and either of theſe Leſſees commits Waſte, the Reverſion is not hereby forfeited. Co. Comp. Cop. 65. S. 59.

[S. c] Forfeiture.

In what Caſes the *Forfeiture of one* ſhall be *of another*.

This in Roll is Letter [F] in fol. 509.

1. **If there be** Tenant for Life, **the** Remainder in Fee, **of a Copyhold. and the** Tenant for Life commits a Forfeiture, **this ſhall not bind the Remainder.**

S. P. reſolv'd, unleſs there is an expreſs Cuſtom. 9 Rep. 107. a. Paſch. 10 Jac. in Podger's Caſe —— No Forfeiture of a Tenant for Life ſhall by Law prejudice him in Remainder or Reverſion, per Gawdy, J only in Court, the other Juſtices being abſent in Parliament and conceiving the Principal Caſe to be clear, he commanded Judgment to be entred accordingly. Cro. E. 598. pl. 3. Hill 40 Eliz. B. R. in Caſe of Raſtal v Turner.——Cro. E. 880. in pl. 10. cites Trin. 39 Eliz. Redſal v. Lacon S. P. accordingly, and ſeems to be S. C ——Noy 42. cites Raſtal v. Lane S. P. and ſeems to be S. C.

2. As **if there be** Tenant for Life, **the** Remainder in Fee, **of a Copyhold, and the** Tenant for Life ſuffers the Houſe to decay **and be waſted, by which the Eſtate of the Tenant for Life is forfeited, and the Lord enters for the Forfeiture, yet this ſhall not bind him in Remainder, but only the Tenant for Life. Tr. 39 El. B. R. between *Raſtel and Turner*, adjudged, upon a ſpecial Verdict.**

See pl. 1. and the Notes there.

3. **If a** Feme Tenant for Life **of a Copyhold** takes Husband, **and the** Husband commits a Forfeiture **of the Copyhold**, and dies, **this Forfeiture ſhall bind the** Feme. **4 Co. between *Clifton and Molineux* reſolved.**

4 Rep. 27. a. pl. 14. Mich. 27 and 28 Eliz. B. R the S. P. reſolv'd. ——Gilb. Treat. of Ten. 203 cites S. C.—— If the Husband denies to pay the Rent, or to do Suit, and dies, the Forfeiture remains; for the Ld. muſt have his Services, and the Feme has no way to avoid theſe Non-feaſances; per Wray. Cro. E. 149. pl. 18 Mich 31 and 32 Eliz. B. R. in Caſe of Hedd v. Chaloner.

4. **If a Copyholder** leaſes for Years, by Licence **of the Lord, and after the** Leſſee makes a Feoffment, **this ſhall forfeit only his Eſtate, and not the Eſtate of the** Copyholder. **P. 1 Ja. B. between *White and Hunt*. Hobarts Reports 239.**

Gilb Treat. of Ten 232. cites S. C

5 If

Cro C. 7. pl. 4 Severne v. Smith Pasch. 1 Car. in Cam. Scacc. adjudged that such Forfeiture

5. If a Feme Copyholder takes Baron, and the Baron makes a Lease for Years, though the Lord enters for a Forfeiture, yet this is not any Forfeiture to the Feme after the Death of the Baron, but she may well enter because this Act was a Tort to the Feme as well as to the Lord; and where there is a Tort to the Feme, 'tis not reasonable that it should be a Forfeiture of her Estate. Mich. 21 Jac. B. R. between *Salven and* , adjudged upon a special Verdict.

shall not bind the Feme; but upon another Point Curia advisare vult. —— Palm. 383 S. C. Lea Ch. J said it seem'd to him that the Court were all of one Opinion that this Forfeiture did not bind the Feme or her Heirs after the Baron's Death, and Judgment Nisi. —— Roll Rep. 344. S. C. adjornatur. —— Ibid 361. S. C. adjornatur. —— Ibid 372. S. C. says that Doderidge J. the Term before took a Difference where the Lord entred in the Life of the Baron and where not, but now he said nothing, whereupon Ley Ch. J. thought the Court of one Opinion, and gave Judgment Nisi. &c. —— Doderidge J. before held this to be a Forfeiture, and took this *Difference*, (viz.) *Where a Feme sole is a Copyholder and afterwards* she *marries, and her Husband makes a Lease for Years without Licence*, this is a Forfeiture, because it was her Folly to marry a Man who will forfeit her Estate; but *where a Copyhold is granted to a Feme Covert*, and her Husband makes such a Lease, 'tis no Forfeiture. Godb. 345. pl. 348 cites Trin. 21 Jac Severne v. Smith. —— Palm. 385. S. C. and same Diversity taken by Doderidge J. —— 2 Roll Rep. 361 S C. and same Diversity by Doderidge J. —— Gilb. Treat. of Ten. 228. cites S. C. but if *she does any thing that makes the Lease to have Continuance* the Forfeiture remains.

A Woman Copyholder married, and then her Husband made a Lease for

6. But if a Baron seised of a Copyhold in the Right of his Feme, does Waste, this Forfeiture shall bind the Feme after the Death of the Baron, because the Act done is not any Tort to the Feme, but lawful as to her, and only a Tort to the Lord. Co. 4. 27. [*Clifton and Molineux.*]

Years not warranted by the Custom of the Manor; Wray said, that if the Husband denies to pay the Rent, or do Suit in Court, these are present Forfeitures which shall bind the Wife; for they are Things which the Lord must necessarily have, but a Lease is no great Prejudice to him, and it is good to advise; but Shurley and Tanfield said it had been adjudged that Waste is a Forfeiture, which shall bind her. Cro. E 149. pl. 18. Mich. 31 and 32 Eliz. B. R. Hedd v. Chaloner. —— Gilb. Treat of Ten. 208. cites S C. —— But if a Stranger had committed Waste here with the Assent of the Husband, this would be no Forfeiture. 4 Rep. 27. a. pl. 14 in S. C. resolv'd. —— Gilb. Treat. of Ten. 203. cites S. C and S. P.

Dal. 49. pl. 12. S. C. in totidem Verbis. —— Supplement to Co. Comp. Cop 76. S. 11. cites S. C.

7. Where Copyholds are demisable for 2 Lives successively as to *Tenant for Life, Remainder for Life*, if Tenant for Life cuts Trees 'tis a Forfeiture of both, and if *a Stranger cuts Trees*, or one that occupies by their Sufferance, 'tis Forfeiture of the Copyhold. Mo. 49. pl. 149. Pasch. 5 Eliz. Anon.

—Where A. was Tenant for Life, Reversion to B. in Fee, A. contrived to sell the Copyhold to J. S. in Fee, which was to be done by A's committing a Forfeiture, and then the Ld. to seize, and grant it in Fee by Copy to J. S. and this was done accordingly; But Gaudy J. who was the only Judge in Court, conceived that this Collusion ought not to prejudice the Reversioner, and thinking it a clear Case, commanded Judgment to be entred for the Plaintiff the Reversioner. Cro. E. 598. pl. 3. Hill. 40 Eliz. B. R. Rastall v. Turner. —— Noy 42. cites Rastal v. Lane. S. P. and seems to be S. C. —— Gilb. Treat. of Ten. 230. sayes such Authorities are founded upon the highest Reasons, for else he that has but a particular Interest in Copyholds will have as good an Interest as those that have the Fee, for by secret Covin he may commit a Forfeiture, and so give away the Fee.

Cro. E. 879. pl. 10. S. C. —— For they are *divided Estates*, and

8. Surrender to A. for Life, Remainder to B. in Fee. A. *comes not in on 3 Proclamations* according to the Custom, this is a Forfeiture during the Life of A. but on his Death B. may enter. Noy 42, 43 Eliz. Baspo olv. Long.

the Custom shall be intended of an intire Fee-simple given to one Person, and the Custom being to bar an Estate shall be taken strictly. Yelv. 1. S. C. adjudged. —— But a Quære is added, if such Surrender be made *to A. and B. and their Heirs, and A. comes in, and B. not*, within the Proclamations, whether A. shall have all, or that the Moiety be forfeited? Ibid —— S. C. cited Godb. 369. in pl. 458. —— *But* the Reason of the Resolution of the Case implies, that had the *Custom been laid to reach Remainders too*, it had been good, and the Remainder had been forfeited in that Case. Gilb. Treat. of Ten. 230. cites S. C.

9. *Waste*

9. *Waſte by Leſſee for Life* is forfeiture only during his own Life, and ſhan't prejudice the Remainder in Fee. Noy. 42, 43 Eliz. Baſpool v. Long. Cro. E. 880. cites 39 Eliz. Redſall v. Lacon. S. P. accordingly.

10. If *Husband and Wife* be *Joint Copyholders of the Purchaſe of the Husband*, and during the Coverture, *the Husband is attainted of Felony, and dieth*, it is no Forfeiture of any Part of the Copyhold; *But if the Purchaſe he made before the Coverture*, then it is a Forfeiture of the Moiety. Supplement to Co. Comp. Cop. 76. S. 10.

11. If a *Guardian of a Copyholder commits Waſte*, he ſhall forfeit the Wardſhip only, not the Inheritance of the Copyhold. Co. Comp. Cop. 65. S. 59.

12. If *Husband commits Waſte in Copyhold* Lands *which he has in Right of his Wife*, this is a forfeiture of the Wife's Copyhold. Co. Comp. Cop. 65. S. 59. cites 4 Rep. 27. a.

13 *But if a Stranger commits Waſte, without the Conſent of the Huſband*, this is no Forfeiture, tho' the Wife conſents. Co. Comp. Cop. 65. S. 59.

14. If 2 *Joint-Tenants* are of a Copyhold and *one commits Waſte*, he forfeits his own Part only; for no Man can forfeit more than he has granted to him. Co. Comp. Com. 65. S. 59.

15. *Ceſty que Truſt* of a Copyhold Eſtate commits Treaſon or Felony, this no way charges or affects the Copyhold Eſtate, but if a *Truſtee* does 'tis a Forfeiture of the whole Eſtate: but where a Copyholder in Fee on his Marriage Surrendered to the Uſe of *himſelf for Life*, Remainder *to the firſt &c. Son in Tail Male*, Remainder *to himſelf in Fee*, and no Admittance on ſuch Surrender is had in many Years after, and in the mean Time he does Acts of Forfeiture, and the Ld. is in for the Forfeiture, and the Tenant denied Relief in Equity, yet whether if the eldeſt Son ſhould bring a Bill againſt Father, and the Ld. to *compel an Admittance purſuant to the Marriage Surrender* and Settlement, was not in the Caſe; but Ld. Macclesfield ſaid, that on ſuch Bill it might come then to be conſidered, How far *the Forfeiture of the Father ſhould bind the the Son.* Ch. Prec. 573. Trin. 1721, in Caſe of Sr. H. Peachy v. the Duke of Somerſet.

[T. c] Advantage. *Who ſhall take Advantage* of a Forfeiture, [as Lord.]

This in Roll is Letter (G) in fol. 509.

1. A Copyholder for Life, where the Remainder is over for Life, commits a Forfeiture, he is the Remainder ſhall not enter, but the Lord, **becauſe the Remainder it to commence in Poſſeſſion after the Death of the Leſſee by the Cuſtom.**

2. Leſſee for Years of a Manor **ſhall take Advantage of a Forfeiture committed by a Copyholder of the Manor,** for he is Dominus pro Tempore. **H. 38, 39 El. B. R. in * *Eaſt and Harding's* Caſe, agreed per Curiam. Tr. 10 Ja. B. between** *Rawles and Maſon*, **per Curiam.** * S. P. held accordidgly, per tot. Cur. Cro. E. 498. pl 19

3. **If there be a Lord of a Manor, in which there are Copyholders, Tenants of the Manor, and the** Lord grants to a Stranger the Freehold of a Copyhold in Fee, **Though by this the Tenement is divided from the * Manor, and not demiſable by Copy again, yet the** S. P. agreed by all the Juſtices. Cro. E. 499. pl. 19. Mich. * Fol 510.

38 & 39 Eliz. B. R. in Case of East v. Harding.

Grantee of the Freehold shall take Advantage of a Forfeiture committed after **by the Copyholder, for he ought to pay his Rent to the Grantee.**

—— Mo 393. pl 508. S C. & S P agreed, with this Difference, that all Forfeitures which accrue by Reason of Matters of the Court are discharged, but not Forfeitures at Common Law, as Waste, and Leases to the Disherison, but that the Feoffee shall enter and take Advantage of such as are done in his Time ——— Gilb. Treat. of Ten. 229. cites S. C. —— The Feoffee or Lessee shall have Advantage of all Forfeitures belonging to Land, as in Case of Feoffment &c. but not for not doing of Fealty; per Popham. Ow. 63. Pasch. 39 Eliz. in Case of East v. Harding.

Cro. E 499. pl. 19. S C. & S P Gawdy and Fenner doubted if Lessee of the Feoffee might enter; but they agreed, that Lessee for Years of a Manor might take Advantage of the Forfeiture of a Copyhold; But Popham and Clench held clearly, that Lessee for Years of the Feoffee might well take Advantage of that Forfeiture; for the Copyholder, as to the Forfeiture of his Estate, remains in all Degrees as before the Severance thereof from the Manor. —— Mo. 393. pl. 508. S C & S P. but the Court was divided; but adds, that Mich 40 & 41 Eliz Popham put the Point at Serjeant's Inn to all the Justices of England, and that they inclin'd that the Lessee for 10 Years should take Advantage of the Forfeiture, whereupon Rule was given for Judgment, and was adjudged Hill. 42 Eliz. ——— Ow. 63. S. C. & S. P. but not very clear.

4. So **in this Case,** if the Grantee of the Freehold makes a Lease for Years of the Freehold, **this** Lessee for Years shall take Advantage **of a Forfeiture committed after by the Copyholder, because he is Dominus pro Tempore. Mich. 38, 39 Eliz. B. R. between** *East and Harding*, **adjudged by the Opinion of all the Judges.**

Cro. C. 333. pl. 15. S C. adjudged a Forfeiture, and that the Lord's Acceptance (he not knowing of the Forfeiture) is no Dispensation therewith, so that the Lord's Lessee has a good Estate and Right in him, for which his Entry is lawful ——— Jo. 249 pl. 3. Mathews v Wheston, S.C. states it as one Day between the several Leases. Agreed per tot. Cur. that though the general Custom of the Realm allows a Copyholder to make a Lease for a Year, yet this ought to be a Lease in Præsrnti, and he cannot make another for another Year in Reversion, and that when the Surrender was made to the Lord this Lease was void against him, and his Interest discharged, without Presentment and Seisure for the Forfeiture.

5. **If a** Copyholder for Life makes a Contract at one Time, to make three several Leases by Indenture, **one** to commence after the other, **there being** two Days between each, **and after makes the three several Leases accordingly, and** seals them at one Time, **and the Lessee enters, and after the Copyholder** surrenders to the Lord to the Use of the Lord, **who hath not any Conusance of the making of these Leases, and after the Lord enters, and makes a Lease for Years to J. S. and the first Lessee for Years brings Trespass against the second Lessee, and adjudged it does not lie; because it was a Forfeiture, and a void Lease against the Lord, so that by his Entry he was in of his ancient Right. Mich. 7 Car. B. R. between** *Matthews and Wheaton* **adjudged upon a special Verdict, I my self being de Concilio Querentis. Intratur Hill. 5 Car. B. R. Rot. 496.**

6. The *Custom* was, *that if a Copyholder makes a Lease for more than one Year*, that he *shall forfeit his Copyhold.* A *Copyholder committed such a Forfeiture*, and afterwards the *Lord leased the Manor for Years*, and *Lessee entred for the Forfeiture*; but per Weston, it was held it was not lawful, for though the Heir may enter in the Time of his Ancestor for a Condition broken, because he is privy in Blood, yet the Lessee cannot so do, for he is a Stranger; But per Dyer if the Forfeiture is presented by the Homage, and enroll'd in the Court-Rolls, the Lessee may afterwards enter, because by the Forfeiture the Copyhold Estate was determined. 4 Le. 223. pl. 359. Mich. 9 Eliz. B. R. Anon.

Gilb Treat of Ten 234. S P. and cites S C.

7. *Two Coparceners Copyholders*, the *one made a Feoffment* in Fee. The *Lord made a Lease of the Manor.* The *Lessee shall not take Advantage* of this Forfeiture, because he is not privy in Title; *But if the Lessor dies, the*

the Heir ſhall take Advantage. Lat. 227. cites it as agreed in Harper's Rep. 18 Eliz. and ſays the Reaſon of the Diverſity ſeems to be, becauſe Waſte is a Prejudice to the Lord only, for the Time being at leaſt, and is not ſo great a Prejudice as Feoffments, (and ſo it ſeems of other Forfeitures a denial of Rent. Suit of Court &c. & a fortiori theſe Forfeitures, for the Denial doth no way prejudice the ſucceeding Lord) but *Feoffment deveſts the Lord of his Freehold and Inheritance*, which being ſtanding Prejudices to the Lord, he ought to have Remedies as laſting as the Harm that is done to him. *Quære, If the Leſſor outlives the Leaſe, whether he may take Advantage of the Forfeiture.* —— Lat. 226. Trin. 22 Jac. Cornwallis v Horwood S. P. Dubitatur, and Adjornatur. ——Palm. 416. Cornwallis v. Hammond, S. C. Dubitatur.

8. *Leſſee for Years of a Manor* ſhall not take Advantage of a Forfeiture *for not doing Fealty*; per Popham. Ow. 63. Mich. 39 & 40 Eliz. in Caſe of Eaſt and Harding. *After a Forfeiture committed*, the Lord *leaſed the Manor for Years*; Per Weſton, Leſſee cannot enter for the Forfeiture; Per Dyer, if the Forfeiture be preſented by the Homage, and inrolled in the Court-Rolls, Leſſee may afterwards enter, for by the Forfeiture the Copyhold is void and determined. 4 Le. 223.——He ſhall take Advantage of the Forfeiture without any Preſentment by the Homage, per Walburton J. Arg. 2 Brownl. 197. Trin. 10 Jac. C. B. in Caſe of Rowles v. Maſon. ——The Lord's Leſſee may enter for a Forfeiture, per Cur. Cro. C. 233, 234 pl. 15. Mich. 7 Car. B. R. Matthews v. Wherton.

9. *Copyholder made a Leaſe for Years, without Licence*, which is a Forfeiture of Common Law, and *afterwards the Lord of the Manor made a Feoffment or a Leaſe of the Freehold of this very Copyhold to another*; adjudged, that the *Feoffee or Leſſee ſhall not take Advantage of the Forfeiture*, becauſe the Leaſe made by the Lord, before Entry or Preſentment, is an Aſſent that the Leſſee of the Copyholder ſhall continue his Eſtate, and ſo is in Nature of an Affirmance of the Leaſe made. Owen 63. Mich. 39 & 40 Eliz. Penn v. Merrivall. S. C. cited by Levins J. 2 Vent 39. Paſch. 35 Car. 2 C. B. and ſaid, that there is a Difference between an Heir taking Advantage of a Forfeiture in the Time of the Anceſtor, and an Alienee in the Time of the former Lord.—— Gilb. Treat. of Ten. 229. cites S. C.

10. If a *Copyholder makes a Feoffment*, and then the *Lord aliens*, neither the Grantor nor the Grantee can take Benefit of this Forfeiture, for neither a Right of Entry nor a Right of Action can ever be transferred from one to another. Co. Comp. Cop. 66. S. 60.

11. If *Tenant for Life* be *of a Manor, with Remainder over in Fee to a Stranger*, if a *Copyholder commits Waſte*, and then *Tenant for Life of the Manor dies before Entry*, yet he in *Remainder may enter*, for he had an Intereſt in the Manor at the Time of the Forfeiture committed, though he could not enter by reaſon of the State of Tenant for Life, which being determined, his Entry is now accrued unto him for the Forfeiture committed in the Life of Tenant for Life. Co. Comp. Cop. 66. S. 60. Gilb. Treat. of Ten. 316. S. P. cites Supplement to Co. Comp. Cop. 170, 171. and ſays, that ſo it ſeems if Tenant for Life had aliened to another his Eſtate, though neither he nor his Grantee could take Advantage of this Forfeiture, yet after his Death it ſeems that he in Remainder might.

12. Sometimes *he that is neither Lord* of the Manor *at the Time of the Forfeiture committed, nor ever after*, ſhall take Benefit of a Forfeiture. Co. Comp. Cop. 66. S. 60. *As if the Lord* of a Manor *grants a Copyhold in Fee, and then grants* Frank-Tennant or *the Inheritance of this Copyhold to a Stranger*, the Grantee, though no Lord of the Manor, nor able to keep any Court, ſhall take Benefit of Forfeitures made by the Copyholder; As if the Copyholder do make a Feoffment Leaſe, Waſte, deny the Rent &c. Co Comp. Cop. 66. S. 60.

13. *Re-*

Copyholder for Life; the *Lord makes a Leaſe to commence after the End*, Forfeiture, or Determination *of the Eſtate for Life*; the *Copyholder commits a Forfeiture*; the *Lord will not enter*; the *Leſſee may*. Gilb. Treat. of Ten. 229.

13. *Regularly* it is true, that *none can take Benefit* of a Forfeiture *but he that is Lord* of the Manor *at the Time of the Forfeiture*. Co. Comp. Cop. 65. S. 59.

14. Adjudged, that where there is a *Copyholder for Life*, and the *Lord leaſes for Years*, and the Copyholder commits a Forfeiture, the Leſſee may enter for the Forfeiture. Godb. 175. pl. 241. Paſch. 8 Jac. C. B. Meers v. Ridout.

15. If a Copyholder makes a Leaſe contrary to the Cuſtom, and the *Lord dies before* Entry or *Seiſure* for the Forfeiture, he or they in Reverſion or Remainder ſhall never take Advantage of the Forfeiture committed before his or their Time; Per Cur. Cro. J. 301. pl. 6. Paſch. 10 Jac. B. R. Lady Montague's Caſe.

Gilb Treat. of Ten. 234. cites S. C.

16. A *ſucceeding Lord* of a Manor ſhall not have any Advantage of Forfeiture by Waſte done by a Copyholder in the Time of the preceding Lord; Reſolv'd. 2 Sid. 8, 9. Mich. 1657. B. R. in the Caſe of Chamberlain v. Drake.

Lutw. 799. S. C. adjudged —— Freem. Rep. 516. pl 692. Mich. 1699. Anon. S. P. and ſeems to be S C adjudg'd by 3 Juſtices accordingly; but Powell J. inſiſted, that a Copyholder was but a Tenant at Will in the Nature of his Eſtate, although his Eſtate be ſo ſtrengthened by Cuſtom, that ſo long as he obſerves the Cuſtoms of the Manor, it is not in the Power of the Lord to defeat or determine it; but yet the Copyholder might determine it when he pleaſed. That when a Copyholder took upon him to make a Leaſe for Years his Eſtate was determined, and if his Eſtate was determined, the Heir might take Advantage of it as well as his Anceſtor; but the other three Judges being of another Opinion, Judgment was given for the Defendant.

17. M. and A. two *Coparceners were Ladies of a Manor*; a *Copyholder ſuffers his Houſe to be ruinous, and made a Leaſe of his Copyhold for* 10 *Years. M. dies. The Copyholder dies*, and his Wife entred, claiming her Widow's Eſtate, Et bene, per Cur. For though this Leaſe was a Forfeiture, being a Breach of Truſt, yet it is a perſonal Wrong as much as Waſte, which cannot be transferr'd by Deſcent, but muſt be took Advantage of by him that is wrong'd; but the Eſtate of the Copyholder is not determin'd, becauſe the Lord may affirm it by Acceptance of Rent, and the Election to affirm it or not, muſt be by both the Parceners; The Thing is entire, and therefore the ſurviving Siſter cannot elect; Per three Juſtices. 1 Salk. 186, 187. pl. 5. Trin 8 W. 3. C. B. Eaſtcourt v. Weeks.

18. Treby took this *Difference, That in ſome Caſes an Heir might take Advantage of a Forfeiture, but that was of ſuch Acts as were as well Extinguiſhments of the Copyhold Eſtate, as Forfeitures*; As *where a Copyholder levied a Fine, ſuffered a Recovery*, or *made a Feoffment with Livery*, there the Copyhold Eſtate was extinguiſhed, becauſe the Copyholder had taken upon himſelf to convey the Freehold, which was inconſiſtent with a Copyhold Eſtate; *but where* a Copyholder *makes a Leaſe for Years, or commits Waſte*, theſe are Forfeitures at the Election of the Lord, and and therefore if he takes no Advantage of them by Entry, but doth any Act afterwards which admits him to be a Copyholder, the Forfeiture is purged; As if he *receives the Rent, or accepts a Surrender, or amerces him in his Court*, but in the other Caſe no Act of the Lord can purge the Forfeiture, becauſe in Caſe of a Fine, Recovery, &c. the Copyhold is utterly extinguiſhed. Therefore if the Lord to whom the Wrong is done, doth not make his Election to make it a Forfeiture by Entry, his Heir ſhall never take Advantage of it. He ſaid, he agreed with the Opinion of Rolle, that a *Feoffment with* [*without*] *Livery*, or a *Bargain*

and

and Sale without Inrollment, are no Forfeitures, becauſe imperfect Conveyances, and not executed. Freem. Rep. 516, 517. pl. 692. Mich. 1699. B. R. Anon.

(U. c) Advantage of a Forfeiture. At what Time it may be taken.

1. IF Copyholder *makes a Leaſe* not warranted by the Cuſtom, it will be a Forfeiture *before the Leſſee's Entry*; Per Anderſon Ch. J. Mo. 185. in pl. 329.

2. *Offences* which are apparent and *notorious*, *of which the Lord by common Preſumption cannot chuſe but have Notice*, *are Forfeitures*, *eo inſtante* that they are committed. Co. Comp. Cop. 63. S. 57.

3. As *if by ſpecial Cuſtom*, *upon the Deſcent* of any Copyhold of Inheritance, *the Heir is tied upon three ſolemn Proclamations*, made at three ſeveral Courts, *to come in and be admitted* to his Copyhold, if he fails to come in, this *Failure is* a Forfeiture *ipſo facto*. Co. Comp. Cop. 63. S. 57.

4. So if a Copyholder be *ſufficiently warned to appear*, and he fails, this is a *Forfeiture ipſo facto*. Co. Comp. Cop. 63. S. 57.

(X. c) Where one and what Tenant ſhall take Advantage of the Forfeiture of another Tenant.

1. WHERE there is *Tenant for Life*, *Remainder for Life* of a Copyhold, and the *Tenant for Life commits a Forfeiture*, he in *Remainder ſhall not enter*, *but the Lord ſhall have it during the Life of him by whom it was forfeited*, but this ſhall not deſtroy the Remainder without an expreſs Cuſtom in ſuch Caſe; Reſolv'd. 9 Rep. 107. a. Paſch. 10 Jac. Podger's Caſe. 2 Brownl. 157. Bicknel v. Tucker. S. C. & S. P. by Coke Ch. J —— 1 Brownl. 181. S. C. but S. P. does not appear. —— S. P. by Holt Ch. J. 2 Ld. Raym. Rep 1000. Mich. 2 Ann.

2. A Copyhold was *granted to A. for Life*, and afterwards according the Cuſtom, the *Reverſion to B. for Life*, *immediately after the Death*, *Surrender*, *Forfeiture*, *or other Determination of the Eſtate of A. who was afterwards attained of Felony* The *Lord did not enter*, and the *King pardoned A.* Afterwards *B. in Reverſion entred*, *and adjudged lawful*; upon which Error was brought in the Exchequer-Chamber, and the Error aſſign'd was, that the Reverſioner for Life cou'd not take Advantage of this Forfeiture, but that the Lord ſhould have entred, and ſo have determined the Eſtate of A. and then B. the Reverſioner might have entred on him, but all the Court held, that the Eſtate for Life was determined by the Attainder, becauſe a Copyhold is but a Tenancy at Will in the Eye of the Law, and the Attainder determined his Will, ſo that he is diſabled to hold any Eſtate, and then he in Reverſion may take Advantage of this Determination. 3 Lev. 94. Mich. 34. Car. 2. Strode v. Denniſon. 2 Jo. 189. Beniſon v. Strode S. C. accordingly. —— 2 Show. 150. pl. 133. S. C. adjornatur. —— Skin. 8. S. C. argued. Sed adjornatur. Ibid. 29. pl. 5. S. C. adjudged, and the whole Court held, that the Entry of him in Remainder was good; and that the Lord cannot hold it againſt his own Grant.

3. If there be a *Copyhold* Eſtate *for Life, Remainder to B. if Tenant for Life forfeit*, it is not ſuch a Determination as to let in the Remainder, but the Lord ſhall enjoy it during the Life of Tenant for Life. 12 Mod. 123. Paſch. 9 W. 3. Head v. Tyler.

(Y. c) Forfeiture. Of how much it ſhall be.

Godsb. 189. pl. 126. Oland v. Bardwick S. C. adjudged that the Husband ſhall not have the Corn; But Clench held, that

1. A *Widow* Copyholder durante Viduitate, according to the Cuſtom, *ſow'd the Land, and before the Corn was ſevered ſhe married*; Adjudged that the *Lord ſhall have the Crop*, becauſe her Eſtate was determined by her own Act. So if ſhe had leaſed the Land for Years, and afterwards married, the Leſſee having firſt ſow'd the Lands, he ſhall not have the Corn, for though his Eſtate is determined by the Act of a Stranger, yet he ſhall not be (as to the firſt Leſſor) in a better Caſe than his Leſſor was. 5 Rep. 116. Hill. 44 Eliz. B. R. Oland's Caſe.

if ſhe had leaſed the Land, and the Leſſee had ſown it, and then ſhe had married, and the Lord had entred, yet the Leſſee ſhould have the Corn.—— Mo. 394. pl. 512 Oland v. Burdwick S. C. adjudged that the Lord ſhall have the Corn, and not the Wife; But otherwiſe if her Eſtate had ended by Death, Divorce &c. —— Cro. E. 460. (bis) pl. 10. S. C. adjudg'd for the Lord againſt the Baron by Popham and Clench, contradicente Fenner, & abſente Gawdy.

This in Roll is Letter (E) Fol. 509.

[Z. c] In what Caſes a *Forfeiture of Part ſhall be* a Forfeiture *of the whole.*

S. P. as to Waſte done, Reſolv'd. 4 Rep. 27. a pl. 15. Trin. 26 Eliz. B. R. Taverner v. Cromwell, where ſeveral Acres are held by ſeveral Copies, and by ſeveral Rents, for tho' they are all in One and the ſame Hand, yet every Acre is held ſeverally, and to every Acre there is a ſeveral Condition in Law tacitly annex'd, ſo that the Forfeiture of the one cannot be the Forfeiture of any of the others; for the ſeveral Conditions in Law enſue the ſeveral Tenures.—*So* where *diverſe Copyholds* are *granted by one Copy, and ſeveral Habend' and ſeveral Reddendums for every of them, but they all began at one Time, and were to end at one Time*; held the Forfeiture of one is not the Forfeiture of the other, for they are ſeveral Grants and as ſeveral Copies. Cro. E 353. pl. 10. Mich. 36 & 37 Eliz. C. B. Taverner v. Lord Cromwell. ——— 4 Rep. 27. a. b. pl. 15. S. C. & S. P. reſolv'd per tot. Cur. where the Lord admitted the Tenant Tenendum per Antiqua Servitia inde prius debita et de Jure conſueta, or to ſuch Effect, and A. commits a Forfeiture in Bl. Acre, he ſhall forfeit this only; for the Tenendum. reddendo ſingula ſingulis, doth continue the ſeveral Tenures.— Supplement to Co. Comp. Cop. 74. S. 10. cites S. C.— Ibid. 65. S. 59. S. P.

1. **If a Copyholder** makes a Feoffment of an Acre **of Land, Parcel of his Copyhold, all the Copyhold is not forfeited by this, but only that Acre. P. 41 El. B. R. between** *Fuller and Terry.*

2. **If a Copyholder** cuts down a Tree which grows upon an Acre **of Land, Parcel of the Copyhold; this is a Forfeiture of all the Copyhold, becauſe the Trees are to be employ'd in Building and Reparation of the Houſes and Copyhold, and therefore by the doing of Waſte all the Copyhold is impaired. P. 41 El. B. R. between** *Fuller and Terry.*

3. As

3. As to Forfeiture of a Part being a Forfeiture of all, as by Waſte or Feoffment, or denying of Rent &c. it is *not material whether the Copyholds are in one or ſeveral Copies, but only whether the Tenure be one or ſeveral.* 4 Rep. 27. b. ſays it was ſo adjudged upon Demurrer, Hill. 35 Eliz. C. B. in Caſe of Taverner v. Cromwell.

Het. 36. Arg. cites S. C. ——Gilb. Treat. of Ten. 231. 232. cites Lex Cuſtum.

that by *Feoffment* of Part ſo much only is forfeited, *but if* * *Waſte* be committed in Part, the whole by the ſame Tenure is forfeited, for that goes to the Deſtruction of the *Houſes*, and ſo of the whole Copyhold Eſtates, but *if there be no Building*, Quære; for he ſays it ſeems unreaſonable then that Waſte in Part ſhould be a Forfeiture of the whole, and ſo he ſays it ſeems in Caſe of Feoffment of Part.

* S. P. as to the Waſte in cutting Trees in three Acres, that it is a Forfeiture of all the Lands granted by that Copy; Per Cur. 3 Keb. 641. pl. 47. Paſch. 28 Car. 2. B. R. in Caſe of Paſchall v. Wood. ——Gilb Treat. of Ten. 204. cites S. C. and ſays, that if a Copyholder be ſeiſed by Force of ſeveral Copies of ſeveral Pareels, by ſeveral Tenures, if he commit a Forfeiture in one, it is no Forfeiture of the Reſt; As if he commit Waſte in Part of Black Acre, it is a Forfeiture of all that Acre, and by the ſame Reaſon, if Waſte be committed in one Acre, it is a Forfeiture of 20 Acres, if held by one Tenure, for the Condition in Law annexed to the whole Eſtate is broke, and ſo the Lord may enter for the Forfeiture; but where there are ſeveral Tenures, though they be in the Hands of one Copyholder, there are ſeveral Conditions in Law annexed to the ſeveral Parcels, and therefore the Breach of one is not ſo of the other; If ſuch a Copyholder ſurrenders to the Uſe of another, and the Lord admits him by one Copy, Tenend' per Antique Servitia, the ſeveral Tenures remain; but if the Admittance were by one Tenure, then it ſeems a Forfeiture of Part would reach the whole, becauſe the Condition in Law is but one; ſo if ſeveral Copyholds eſcheat to the Lord, and he grants them again, renend' per Antiqua Servitia to A. and he commits a Forfeiture in Part, this extends not to the whole.

4. If *ſeveral Copyholds eſcheat to the Lord, and he regrants them by one Copy*, the Forfeiture of the one is not the Forfeiture of the other. Co. Comp. Cop. 65. S. 59.

4 Rep. 27. b.

(A. d) Forfeiture. What ſhall be a Diſpenſation or Excuſe thereof, and by whom it may be.

1. A Copyholder *committed Waſte*, and afterwards the *Lord accepted of the Rent*, the Queſtion was, whether ſuch Acceptance barr'd him of his Entry for the Forfeiture? Cook argued that it ſhould not, for this being a Condition in Law, which when broken the Eſtate of the Copyholder is thereby merely void, and the Court agreed that the *Copyhold was in the Lord preſently by the Forfeiture.* Sed adjornatur. Mich. 28 & 29 Eliz. B. R. Godb. 47. pl. 58. Mich. 28 & 29 Eliz. B. R. Anon.

If a Copyholder does an *Act which extinguiſhes his Copyhold* Acceptance of Rent will not diſpenſe with it;

But otherwiſe where it is a naked Forfeiture. Gilb. Treat. of Ten. 316.

2. *Steward's refuſing to admit* is a good Excuſe. Le. 100. pl. 128. Paſch. 30 Eliz. B. R. Rumney v. Eve.

S. C. cited Supplement to Co. Comp. Cop 75. S. 10. for there was no Negligence in the Party, he having pray'd to be admitted.

3. The *Father commits a Forfeiture and dies*, the *Son is admitted as Heir* by Deſcent. This purges not the Forfeiture, becauſe the Father dying ſeiſed of no Eſtate, the Son cannot be admitted to any. Toth. 107. cites 30 Eliz. Smith v. -------

Gilb. Treat of Ten. 232 cites S. C. and ſays it ſeems unreaable, for he thinks that the Anceſtor died ſeiz'd of an Eſtate, becauſe nothing removes the legal Eſtate and Intereſt out of him but the Lord's ſeiſure.

And where after the Father's Death the *Lord ſeiſed an Heriot* he could not afterwards avoid the Heirs Eſtate for that Forfeiture, becauſe the taking the Heriot on the Father's Death *allow'd of a Dying ſeiſed.* Toth. 107. cites Hill. 1592. Bacon v Thurley.

4. If

Gilb. Treat. of Ten. 233. cites S. C.

4. If a Copyholder makes *Default at Court*, and he is there amerc'd, though the Amercement be *not eſtreated* or levied, yet it is a Diſpenſation of the Forfeiture; Held. Le. 104. pl. 136. Mich. 30 Eliz. B. R. in Sir John Braunch's Caſe.

Cro. E. 292. pl. 5. S. C. but S. P. does not appear. ——Ow. 63. S. C. and Popham ſaid, that the Feoffee or Leſſee ſhall have

5. The Queſtion was, whether the diſmembring of the Inheritance from the Copyhold Land by the *Feoffment of the Manor* has diſabled every Perſon from taking Advantage of any Forfeiture, and it was agreed with this *Difference*, that all *Forfeitures which accrue by reaſon of Matters of the Court, are diſcharged*, but *not Forfeitures at Common Law, as Waſte and Leaſes to the Diſheriſon*, but that the Feoffee, as to ſuch as are done in his Time, ſhall enter and take Advantage of them. Mo. 392, 393. pl. 508. Hill. 37 Eliz. B. R. the 4th Point in Caſe of Eaſt v. Harding.

Advantage of all Forfeitures belonging to Land, as in Caſe of Feoffment and the like, but not for not doing Fealty.

6. If the *Lord does any Thing whereby he doth acknowledge him his Tenant after Forfeiture*, this Acknowledgement amounts to a Confirmation; As if he *diſtrains* upon the Ground *for Rent* due after Forfeiture, or if he admits after the Forfeiture, or the like, theſe are Eſtoppels to the Lord, ſo that he can never enter, ſo the Lord have Notice of ſuch Forfeitures before any ſuch Act which may amount to a Confirmation be done; Yet ſome make this *Difference, that theſe Forfeitures only which deſtroy not the Copyhold are confirmable by* ſubſequent Acknowledgement, *and not thoſe Forfeitures which tend to the Deſtructions of a Copyhold*, As if the Copyholder makes a *Feoffment*, by this the Copyholder is deſtroyed, and therefore no ſubſequent Acknowledgment of the Lord will ever ſalve this ſore. Co. Comp. Cop. 66. S. 61.

7. A Copyholder *levies a Fine, makes a Feoffment, or ſuffers a Common Recovery*, which deſtroys the Eſtate; In ſuch Caſe *no* Acceptance of the Rent, or *Act done by the Lord ſhall be available to make the Eſtate again good*; *But where the Cuſtom of the Manor only is broken*, as if the Copyholder *makes a Leaſe* of his Copyhold Lands for more Years than one Year, or *denies to pay his Rent*, or *denies to be ſworn of the Homage*, or *commits Waſte*, there his Eſtate may be afterwards confirmed, and there, and in ſuch Caſe the Acceptance of the Rent by the Ld. will amount to a Confirmation of the firſt Eſtate. Supplement to Co. Comp. Cop. 76. S 11.

8. In ſome Caſes, where an Eſtate of a Copyholder is forfeited by Law, yet *by Cuſtom, and the Act of the Lord in his Court* of the Manor, *the Forfeiture may be mitigated*, and the Land ſhall be utterly forfeited or deſtroyed; As where the Cuſtom is, That for *Waſte* Copyhold ſhall be forfeited, a *Cuſtom to amerce the Tenant for the Waſte done, and to diſtrain for the Amercement will* be a good Cuſtom to *mitigate* the Forfeiture of the Copyhold. Supplement to Co. Comp. Cop. 76. S. 11.

Cro. J. 166. pl. 4 Trin. 5 Jac. in Caſe of Mantle v. Wollington. S. P. was made a Queſtion but no Reſolution was given therein. —— Supplement to Co. Comp. Cop. 76. S. 11. cites S. C. —— 1 Salk. 186, 187. S. P. held that the Eſtate of the Copyholder was not determined, becauſe the Lord by Acceptance of the Rent &c. might affirm it.

9. A Copyholder *commits voluntary Waſte* and afterwards the *Lord receives the Rent* without taking Notice of the Waſte, this has purg'd the Forfeiture, per Ch. J. King at Wincheſter Aſſiſes, and the old Diſtinction between Permiſſive Waſte and Voluntary doth not now obtain, but in each Caſe the Receipt of the Rent purges the Forfeiture.

10. If Copyholder commits a *Forfeiture*, and Dominus pro Tempore of any legal Title, though at Will, grants afterwards an Admittance, this is a *Diſpenſation* of the Forfeiture, not only as to himſelf, but as to him in Reverſion; for he may make Voluntary Grants; and ſuch a new Grant and Admittance amounts to an Entry for the Forfeiture, and a new Grant. But a *Lord by wrong* or by Diſſeiſin can't by ſuch Admitance purge the Forfeiture ſo as to bind the Rightful Lord. Lev. 26. Paſch. 13 Car. 2. B. R. Milſax v. Baker.

11. The *Lord after acceptance of the Rent cannot enter upon the Leſſee of a Copyholder*; per Twiſden J. in Evidence to a Jury at the Bar. Keb. 15. pl. 43. Paſch. 13 Car. 2. B. R. Garrard v. Liſter.

12 Where there is an *Actual Entry by the Lord in the Life of the Copyholder for a Forfeiture* by him, as by cutting down Timber and ſelling it, *no Acceptance after will purge the Forfeiture*, And though it never was preſented by the Homage, it is not Material, it being a thing Notorious. 3 Keb. 641. pl. 47. Paſch. 28 Car. 2 B. R. Paſchal v. Wood. Gilb. Treat. of Ten. 233. cites S. C.

13. A Copyholder cut Timber and ſold it and died. The ſucceeding Lord brought Ejectment. The Defendant pleaded, that in Treſpaſs brought by him *the Lord* (now Plaintiff) *juſtified for taking a Heriot*; and Per Cur. Juſtification for *Heriot ſervice* on Seiſin of the Anceſtor is an Acceptance of the Heir as Tenant, and purges the Forfeiture; but otherwiſe of an Acceptance, Juſtification or Avowry for *Heriot Cuſtom*. 3 Keb. 641. pl. 47. Paſch. 28 Car. 2. B. R. Paſcall v. Wood. Gilb. Treat. of Ten. 232. cites S.C. and ſame Diverſity, and ſay, that this proves that after the Forfeiture the Eſtate is in the Tenant, elſe the Lord could not have a Heriot; The Reaſon for the Difference ſeems to be, becauſe in accepting of Heriot Service, he admits the Heir Tenant, but in accepting Heriot Cuſtom, he only admits the Tenant died ſeiſed, ſed quære; for it ſeems to me to be a Diſpenſation; for he admits him to be Tenant after the Forfeiture committed, and therefore if the Lord accept of any Services after he knows of the Forfeiture; it is a Diſpenſation; For why ſhould not the Acceptance and Acknowledgement of the Tenant to be Tenant after a Forfeiture, as well diſpence with a Forfeiture, as Acknowledgment of the Heir to be a Tenant.

14. It ſeems, that if the Lord *accepts a Surrender from a Tenant who has committed a Forfeiture*, this is no Diſpenſation or Bar to the Entry of the Lord or his Leſſee, if the Cauſe of Forfeiture be ſuch as the *Lord might well be ſuppoſed ignorant of*, otherwiſe not; As making a private *Leaſe*, and ſo is Cro. C. 233. Matthews v. Whetton; But for *Failure of Suit of Court*, or *Nonpayment of Rent &c.* it is otherwiſe; becauſe he cannot be preſum'd ignorant of it. 2 Vent. 38, 39. Paſch. 35 Car. 2. C. B. Lord Cornwallis's Caſe. *But* an *Admiſſion* by the Lord diſpenſeth with a former Forfeiture. Toth. 107. cites 25 Eliz. Clerk v. Wentworth.

—— But Lord Cornwallis Caſe was, that a *Copyholder commits Treaſon, and then ſurrenders* into the Lords Hands to the Uſe of ſome of his Children, *who were admitted*, the Queſtion was, if this were ſuch a Forfeiture as the Lord was bound to take Notice of, and the Court inclined, that the Lord ſhall not be preſumed to take Notice in this Caſe, as he ſhall in the Caſe of Failure of Suit of Court, Nonpayment of Rent &c. 2 Vent. 38, 39. ut ſupra.

15. A *Copyholder for Life ſuffer'd his Houſe to be ruinous, and made a Leaſe for* 10 *Years*. It was admitted per Cur. that theſe were both Cauſes of Forfeiture, and 3 Juſtices held, that the Eſtate of the Copyholder was not determined, becauſe the the Lord by *Acceptance of the Rent &c might affirm it*. 1 Salk. 186, 187. pl. 3. Trin. 10 W. 3. C. B. Eaſtcourt v. Weekes.

(B. d) Forfeiture. In what Caſes the Lord may enter without Preſentment.

Offences which are not Forfeitures till Preſentment are ſuch which *by common Preſumption the Lord cannot of himſelf have Notice of* without Notice given; As if a Copyholder *commits Felony or Treaſon*, or be *outlawed, or excomunicate*, or *in any other Court endeavours to intitle any other Lord to his Copyhold*, or if he *aliens by Deed*. Co. Comp. Cop. 64 S. 58.

1. *Preſentment* is not of Neceſſity, but for the Lord's better Inſtruction of his Title, and he may, if he will, take Advantage of a Forfeiture before the Preſentment. Cro. E. 499. pl. 19. Mich. 38 & 39 Eliz. B. R. Eaſt v. Harding.

—— G. Treat of Ten. 231. ſays Lord Coke's Reaſon is of no cogency, for if he can take Notice of them, why ſhould he not, ſince Preſentment is not that which gives him Title, but only lets him know what he hath a Title to; But however, it is ſafe to get ſuch a Thing preſented, and if there be a *Cuſtom for it* muſt be purſued.

2. If a Copyholder *goes about in any other Court to intitle any other Lord unto his Copyhold*; or if he *aliens by Deed*, theſe, and the like, ought to be preſented. Co. Comp. Cop. 64. S. 58.

3. There is a *Real* and a *Perſonal* Forfeiture of Copyhold Land; Real is not neceſſary to be found by the Homage, as was reſolved in **Brock's Caſe**, Perſonal Forfeiture is neceſſary to be found. 4 Le. 241. pl. 393. Paſch. 8 Jac. B. R. in Ward's Caſe.

Cro. C. 233. pl. 15. Matthews v. Whetton, S. C. adjudged.

4. Copyholder leaſes for one Year, and for another Year to commence a Day after the firſt Year &c. and after *ſurrenders his Copyhold to the Lord*; the Lord enters, and grants a Leaſe for Yeats; The Leaſe by the Copyholder was a Forfeiture, and when the Surrender was made to the Lord, this Leaſe was void againſt him, and *his Intereſt diſcharged without Preſentment and Seiſure for Forfeiture* by which his Entry was lawful, and his Leaſe for Years good. Jo. 249. pl. 4. Mich. 7 Car. B. R. Matthews v. Wheſton.

5. If there be a Copyhold *Tenant for Life*, the *Reverſion to the Lord*, and the *Tenant commits a Forfeiture*, the Lord may grant the Eſtate to another before any Seiſure; for it is a Determination of the Will, and the Eſtate immediately in the Lord as in his Reverſion. Lev. 26. Paſch. 13. Car. 2. B. R. Milfax v. Baker.

6. Steward of a Manor *need not have an expreſs Authority in Writing* to make a *Demand* and *Entry* upon Refuſal to pay a Fine for Admittance of a Copyhold Tenant, and 'tis not neceſſary for the Steward to make a *Precept for the Seiſure*, but the Demand muſt be Perſonal. 2. Mod. 229. Paſch. 29 Car. 2. in Scacc. Trotter v. Blake.

7. The Lord doth not always make an *actual Entry*, but generally a *Precept to the Steward to ſeiſe the Land*, and that is a Sign the Lord hath a Right, and that is in Nature of a Habere Fac' Poſſ' and does not give Title, but ſuppoſe it, becauſe the Copyhold is determined, or rather, becauſe it appears to be *determined by the Preſentment that is made of ſuch a Forfeiture*; 'tis quite different from an Entry which veſts an Eſtate, and 'tis the Preſentment (if any Thing) ſeems to determine the Eſtate, for the Precept to ſeiſe is in the Nature of an Execution; Per Lord Ch. J. 2 Show 152. pl. 133. Hill. 32 & 33 Car 2. B. R. in Caſe of Benſon v. Strode.

And per Pembertom Ch. J. he may bring *Treſpaſs*, and and per adventure no Entry is needful to Maintain an *Action for the Meſne Profits*. Skin. 9. Mich 33 Car. 2. B. R. Beneſon v. Strode.

8. If Copyholder commits *Waſte* the Lord may leaſe without an Entry; Per Dolben J. 2 Show. 152. pl. 133. Hill. 32 & 33 Car 2 B. R. in Caſe of Benſon v. Strode.

(C. d) Forfeiture. To what Time the Forfeiture ſhall have Relation.

1. IF a Copyholder makes a *Leaſe for Years to commence at Micheal-mas*, it is a Forfeiture preſently, per Hutton J. and none denied it. Het. 122. Mich. 4. Car. C. B. Harding v. Turpin. Cro. E. 499. pl. 19. Mich. 38 & 39 Eliz. B. R. Eaſt v. Harding

——It is a Forfeiture before the Entry of Leſſee. Per Anderſon Ch. J. Mo. 185. pl 329.

2. Though no Advantage can be taken of a Forfeiture *for Treaſon* till Attainder, yet after Attainder it has relation, and the committing the Treaſon is the Forfeiture. Per Levinz J. 2 Vent 39. Paſch 35 Car. 2. B. R. in Lord Cornwallis's Caſe.

(D. d) Where the Forfeiture ſhall be to the King.

1. 35 *Eliz.* cap. 2. ENacts, that *Popiſh Recuſants above 16 Years ſhall within 40 Days after their Conviction repair to their uſual Dweelling, and not remove above 5 Miles from thence, in Pain to forfeit all their Goods, and their Lands and Annuities, during Life.*

2. *A Copyholder ſhall in this Caſe alſo forfeit his Eſtate during Life (if his Eſtate continue ſo long) to the Lord of the Manor, if ſuch Lord be no Recuſant Convict nor ſeiſed or poſſeſſed in Truſt to the Uſe of a Recuſant; for then the Queen ſhall have the Forfeiture.*

3. If a Copyhold given to *ſuperſtitious Uſes* comes to the King by the Statute the Copyhold is deſtroyed, and the Uſes void; but the King does not thereby gain the Freehold of the Copyhold, but that remains in the Lord of the Manor; Reſolv'd. Godb. 233. pl. 322. Mich. 11 Jac. C. B. Bagnall v. Potts.

4. The *King grants the Office of the Cuſtody of a Houſe* for Life; this is a good Leaſe for Life notwithſtanding it is Copyhold, and it is not neceſſary to recite in the Grant that it is Copyhold; and after the Eſtate for Life is determined, the *King may grant again by Copy of Court-Roll* the Houſe and Land, becauſe the King's Grants ſhall be taken favourably, and not extended to two Intents where there is no Neceſſity for it, as there is not here, and we are not here to intend a collateral Intent, and ſo the Copyhold is not deſtroyed, for the Law takes Care to preſerve the Inheritance of the King for his Succeſſors, and it may be a Benefit to the King to have it continue Copyhold, viz. to have Common &c. and his Election is alſo deſtroyed if he may not have it Copyhold; adjudg'd. Sty. 272. Paſch. 1657. Cremer v. Burnet.

(E. d)

(E. d) In what Caſes of Forfeiture Equity will relieve.

1. TOuching Copyholders Mr. Fitzherbert in his Natur. Brev. Fol. 12. noteth well, that foraſmuch as he cannot have any Writ of *falſe Judgment*, nor other Remedy at Common Law *againſt his Lord*, and therefore if the Lord will put out his Copyholder that payeth his Cuſtoms and Services, or will *not admit him, to whoſe Uſe as Surrender is made*, or will *not hold his Court* for the Benefit of his Copyholder, or will exact *Fines arbitrary* where they be cuſtomary and certain, the Copyholder ſhall have a Subpœna to reſtrain or compel him as the Caſe ſhall require. Cary's Rep. 3, 4. cites D. 264. and 124 Fitz. Subpœna. 21.

2. The Defendant would not admit the Plaintiff to his Copyhold; For that the Plaintiff committed a *Forfeiture in cutting down Woods* upon the Copyhold, the Defendant [was] order'd to admit the Plaintiff Tenant, for that the Defendant *could not prove that the ſame was done by the Plaintiff's Directions*, but by a Tenant. Toth. 237, 238. cites 25 Eliz. li. B. Fol. 78. Taylor v. Hooe.

3. A Forfeiture for *cutting down* Timber without Licence, and employing it upon his Copyhold was held relievable upon paying a competent Fine. Toth. 108. cites 1591. Per Clench J. in Caſe of Commin v. Kingſmell.

4. Copyholder Durante Viduitate *cut Timber*, and the Copyhold was ſeiſed for *wilful Waſte*. Upon a Bill by the Widow for Relief Bridgman K. declared, that in Caſe of a *wilful Forfeiture* he could not relieve, but upon the Hearing *directed an Iſſue, whether the primary Intention* in felling the Timber *was to do Waſte*; but as the Order was drawn up, the Iſſue to be try'd was, if the ſuppoſed Waſte was wilful or not; Upon two ſeveral Trials it was found for the Plaintiff, and ſo it was decreed, that Plaintiff ſhould be relieved, and the Defendant to deliver Poſſeſſion, and account for the meſne Profits. Ch. Caſes 95. Hill. 19 Car. 2. Thomas v. Porter and Bp. of Worceſter.

2 Freem. Rep. 137. pl. 170. S. C. ſays the Ld, Keeper being preſs'd to alter the Iſſue, he would not —— Ch. Prec. 571. cites S. C. but ſaid there Arg. to be Monſtrous, but recites it to be, that the Lord had upon two Trials at Law recovered Verdicts, and that he was decreed not only to account for the meſne Profits, but alſo to pay Coſts. [But it ſeemed to be Miſquoted. Vide.]——2 Vern. 664. pl. 590. Arg. cites S. C. of an Iſſue, whether Waſte to commit a Forfeiture.

5. The Grandſon and *Heir* of a Perſon convicted and executed for *Felony*, by which his Lands were *forfeited* to the Lord of the Manor, brought his Bill for *Diſcovery* and delivery of certain old Deeds which the Lord had got into his Cuſtody, and which were relating to the Lands, and were formerly in the Hands of the Plaintiff's Anceſtor; the Court retained the Cauſe to enable the Plaintiff and his Heirs to the Uſe of the Depoſitions therein at any Trial at Law, and Defendant to do the ſame, and Plaintiff to have *Recourſe to the Rolls* &c. of the Manor, and have Copies, paying for the ſame, and as many to be produced at a Trial at Plaintiff's Coſts as Plaintiff required. Fin. R. 249. Paſch. 28 Car. 2. Draper v. Zouch.

6. A. having *two Copyholds* within the ſame Manor, *cut Timber on one, and repaired the other with it*; the Lord had brought Ejectment and a Verdict for the Forfeiture. A. is relieved againſt the Forfeiture, but ordered to pay Coſts both at Law and here. 2 Vern. R. 537. pl. 481. Hill. 1705. Naſh v. E. of Derby.

Ibid. 665. S. C. cited ——Ch. Prec. 574. cites S. C. and ſays, there was only a Miſtake whether the Steward or the Woodman ſhould ſet out the Timber.

7. A Tenant by Copy *letting a Copyhold Tenement fall down* after repeated Admonitions and Preſentments of the Jury of the Waſte for ſeveral Years together, and the Copyhold being ſeiſed for a Forfeiture, brought a Bill, but Lord Harcourt would not relieve him, becauſe on theſe Circumſtances it was equal to voluntary Waſte. Ch. Prec. 574. cites it as the Caſe of Con v. Hickford.

2 Vern. 664. pl. 590. Mich. 1710. Cox v. Higford. S. C. ſays there was a Rule of Court to pay Coſts, and to repair, but he not repairing the Bill was diſmiſs'd. —— Equ. Abr. 121. pl. 20. S. C ſays that after ſix ſeveral Preſentments upon him to repair it, and an Entry by the Lord for the Forfeiture he brought an Ejectment; and when upon the Trial, a Rule was entred into by Conſent, and made a Rule of Court, that upon Payment of 4 l. to the Lord for his Coſts, (which were not a 4th Part of the Coſts he had put the Lord to) and putting the Eſtate into Repair, he ſhould be admitted to it again, yet he never complied with the Rule, nor made any Offer of Coſts to the Lord, but inſtead of that brought another Ejectment, and was nonſuited; and now, after 9 or 10 Years Time more, brings his Bill, and had been ſeveral Times amerced for not appearing at the Court, and refuſed to do Fealty, either upon Oath, (or being a Quaker) upon Affirmation, and upon theſe Circumſtances Lord Keeper declared he ought to have no Relief, or if he were to be relieved, yet it muſt be upon Payment to the Lord of all his Coſts, and putting the Eſtate into good Repair, which would be more Charge to him than his Intereſt the Eſtate would be worth, having only an Eſtate for Life therein, and diſmiſſed the Bill, but with Coſts; and Lord Keeper likewiſe declared, that though this were a voluntary Waſte and Forfeiture, (againſt which it was objected this Court never gave Relief) yet he thought the Rules of Equity not ſo ſtrict, but that Relief might even be given againſt voluntary Waſte and Forfeiture.

8. *Forfeiture by a Quaker* for not *doing Suit and Service* was relieved. Cited 2 Vern. 664 pl. 590. Mich. 1710. as the Caſe of Cudmore v. Raven.

Ch. Prec. 574. for *refuſing to ſwear Fealty* was relieved on the Circumſtance of the Caſe, cites it as the Caſe of Edmore v. Craven.

9. Copyholder made *Leaſes not warranted by the Cuſtom*, and *worked a Quarry of Stone without a Licence, and died*, having on his Marriage ſurrendered to the Uſe of himſelf for Life, with *Remainder to his firſt and other Sons in Tail Male*, Remainder to himſelf in Fee, But *no Admittance* was made on ſuch Surrender. Afterwards his Son and Heir *cut down Trees*, and *incloſed ſome of the land*, notwithſtanding ſeveral Admonitions from the Lord, who brought his *Ejectment, and had a Verdict* as for a Forfeiture. On a Bill brought by the Copyholder for Relief, Lord Macclesfield was clear, that there was no Foundation for Equity to interpoſe; That making a *Leaſe for Years* without Licence was a Forfeiture as it was a Determination of his Will, and *though the Lord ſhould refuſe to grant ſuch Licence*, yet the Tenant has no Remedy, nor would this Court compel the Lord to grant ſuch Licence; That *the Cuſtoms are in the Nature of the Limitation of an Eſtate* which determines on the Breach of them, that *unleſs there were ſome equitable Circumſtances* in this Caſe, this Court cannot interpoſe, which would be to repeal and deſtroy the Law. Ch. Prec. 568. pl. 347. Trin 1721. Sir H. Peachy v. D. of Somerſet.

10. In caſe of *Nonpayment of Rent* or *Fine*, Chancery may relieve a Copyhold Tenant; For the Eſtate in ſuch Caſes is but in Nature of a ſecurity for thoſe Sums, and the Lord may be recompenſed in Damages; Per Lord Macclesfield. Ch. Prec. 572. Trin. 1721. in Caſe of Sir Hen. Peachy v. D. of Somerſet.

11. A. a Copyholder *by Surrender is to be only Tenant for Life*, then *to his firſt and Sons in Tail Male ſucceſſively*, Remainder *to himſelf in Fee*, but *no Admittance is made on ſuch Surrender*. A. commits a Forfeiture, It was held clearly, that A. continued, and was to be conſidered as abſolute Tenant to the Lord, and tho' A. *having a Son* was but a Truſtee for him of the Inheritance of theſe Lands, yet the *whole Inheritance quoad the Lord was in A.* and any Act of Forfeiture done by A. would bind the Inheritance, becauſe there muſt be always

ſome Tenants to anſwer for the whole; but if there had been an Admittance of A. for Life, and of the Son in Remainder, becauſe they come as it were by two diſtinct grants from the Lord himſelf, the Acts of the one will not affect the other; but the till there is an Admittance on ſuch ſurrender, the Lord is not bound to take Notice of it, but the Tenant has the ſame Eſtate as before to all Intents and Purpoſes, and the rather, becauſe *the Lord has no Means to compel him to come in and be admitted* on ſuch Surrender, but if the *Son ſhould bring a Bill againſt A. and the Lord, to compel an Admittance purſuant to ſuch Surrender*, it might come then to be conſidered, how far this Forfeiture of the Father's ſhould affect the Son. Ch. Prec. 472. Trin. 1721. Sir H. Peachy v. D. of Somerſet.

(E d. 2) Forfeiture. How to be proved.

1. FOR a Lord of a Manor to avoid a Copyhold Eſtate for a Forfeiture by making of a Leaſe of his Copyhold Land, contrary to the Cuſtom, there ought for to be *very direct, and certain Proof* made of a certain Leaſe, with a certain Beginning and ending with it, and ſo in like Manner of any other Thing ſuppoſed to be acted and done by a Copyholder, and contrary to the Cuſtom of the Manor, thereby to make a Forfeiture of his Copyhold Eſtate; this muſt all appear certainly to the Court, and the *Oath of a Stranger made in the Lord's Court* to this Purpoſe, ſhall not be of any Force or Effect to prove a Forfeiture, eſpecially when the Copyholder ſtill continues in Poſſeſſion, and ſo dies ſeiſed of his Copyhold Eſtate, and this never came in Queſtion till after his Death; And if ſuch a Preſentment, as this was, in the Lord's Court ſhall be allowed of, upon ſuch an Oath made by a Stranger, as to make a Forfeiture of a Copyhold Eſtate, every Copyholder then might be in conditional Danger to loſe his Copyhold. Bulſt. 189, 190. Paſch. 10 Jac. Hamlen, als. Ld. Montague's Caſe.

2. The Court did alſo clearly agree, that if the Copyholder did promiſe for to make ſuch a Leaſe, and it is not proved in facto, that he did make the ſame, this is no Cauſe for to make a Forfeiture of his Copyhold Eſtate. Bulſt. 190. Paſch. 10 Jac. Hamlen v. Hamlen.

[F. b] *What* Thing will be *an Extinguiſhment* of a Copyhold.

This in Roll is Letter (H.) in fol. 510. —— Mich. 28 & 29 Eliz. C. B. the 3d Reſolution. —4 Rep. 26. b. pl. 12. 30 Eliz. B. R. in

1. THE Severance of the Freehold and Inheritance of the Land, held by Copy of the Manor does not extinguiſh or determine the Copyhold Eſtate, for the Cuſtom hath eſtabliſhed his Eſtate, ſo that the Lord cannot ouſt him ſo long as he pays and performs his Cuſtoms and Services. Co. 2. Lane 17. reſolved.

Caſe of Melwich and Luter S. P. reſolved ——Cro. E. 103. pl. 10. S. C. & S. P. reſolved. —The Lord by his Act cannot, without the concurrent Act of the Copyholder himſelf, determine the Eſtate

Eſtate and Intereſt which the Copyholder has in his Copyhold, and therefore the Severance of the Freehold and Inheritance of the Land holden by Copy of Court Roll (being done by the Act of of the Lord) doth not determine the Copyholder's Eſtate, or extinguiſh the Copyhold; for altho' that the Eſtate of the Copyholder be but an Eſtate at Will, viz. Ad voluntatem Domini Secundum Conſuetudinem Manerii, yet Cuſtom has ſo eſtabliſhed the Eſtate of the Copyholder, that he is not removeable at the Will of the Lord, ſo long as he performs the Cuſtoms and Services. —— Supplement to Co. Comp. Cop. 73. S. S. cites 2 Rep. 17. in Lane's Caſe, and 4 Rep 21 Brown's Caſe.——If the Copyholder will join with the Lord in a Deed of Feoffment of the Manor, there, by that Act of them both, the Copyhold is extinct, as it was ſaid by the Lord Anderſon. Ch. J. Paſch. 24 Eliz. C. B. Supplement to Co. Comp. Cop. 73. S. S.

2. **If a Copyholder in Fee accepts a Leaſe for Years of the ſame Land from the Lord, this determines his Copyhold Eſtate. Co. Lane 16. b. 17. reſolved.** Gouldsb. 34. S. C. & S. P. agreed by the Court, and all the Serjeants. —— S. P. agreed per tot Cur. Godb. 11. pl. 16. Paſch 24 Eliz. C. B.——S. P. ſaid Arg. to have been adjudged. Cro. J. 84. pl. 8. Mich. 3 Jac.——S. P. by Dodridge J. 3 Bulſt. 81. —— Bulſt. 32. S. P. per tot Cur. Anon.——4 Rep. 31. a. b. pl. 24. Mich. 18 & 19 Eliz. S. P. accordingly ——And it is all one as if the Copyholder had accepted immediately a Leaſe for Years of his Copyhold, as was adjudg'd in Hyde's Caſe; For the Reaſon in both Caſes is the ſame, viz. that Copyhold Intereſt and Eſtate for Years cannot be in one and the ſame Perſon, and at one and the ſame Time, of one and the ſame Land, without confounding the Leſs; and beſides, they are of divers Natures, and can't ſtand together in one and the ſame Perſon. 2 Rep. 17. a. reſolved. ——Gilb Treat. of Ten. 209. cites S. C. and ſays, that by the ſame Reaſon a Releaſe upon that Leaſe will paſs the Freehold and Inheritance to him.——Ibid. ſays that tho' by the taking a Leaſe for Years the Copyhold is determined, yet he may grant it by Copy to another; And if the Copyhold afterwards comes to the Lord's Hands, and he aliens the Manor by Fine &c. the Alienee may regrant it.

3. So if **there be a Copyholder in Fee of Lands, and the Lord** leaſes to another for Years, who aſſigns over the Term to the Copyholder, **this extinguiſhes his Copyhold Eſtate, for this is all one as if he had accepted this Leaſe from the Lord himſelf. Co. 2. Lane 17. reſolved.** Le. 170. pl. 237. Mich. 30 & 31 Eliz. C. B. Smith v. Lane S. C. held accordingly.——And. 191. pl. 227. S. C. adjudged; For both the Intereſts cannot be in the ſame Perſon Simul & Semel, and conſequently one of them muſt be determined, which muſt of Neceſſity be the Cuſtomary Eſtate; For the Eſtate at Common Law cannot merge in that, and when Common Law and Cuſtom come together, and the one or the other muſt neceſſarily have Prerogative, and ſtand, the Common Law ſhall be preferr'd and take place before the Cuſtom.——Gouldsb. 34. pl. 9. S. C. Adjornatur ——By acceptance of a Leaſe for Years by the Copyholder the Copyhold is extinct; Agreed per tot. Cur. Godb. 11. pl. 16. Paſch. 24 Eliz. C. B.

4. *C. purchaſed a Copyhold of A. to himſelf, his Wife, and Child, for their Lives*, and afterwards *A. granted a Leaſe of the ſame Lands to B. for his Life, with Livery* of Seiſin, *reſerving a Rent, and after that levied a Fine of the ſaid Premiſſes to C. who accepted the Rent of B.* The Queſtion was, if the Copyhold was extinguiſhed? D. 30. b. pl. 207. Hill. 28. H. 8. in Canc. Compton v. Brent.

5. The *Lord deviſed* [*demiſed*] a Copyhold *to C. for Life*, and after *paſſed the Freehold*, and Soyl thereof *by Livery of Seiſin* thereof *to B. for Life, reſerving a Rent*, and then *by Fine* levied *doth grant the ſaid Land to the ſaid C.* (come ces que il ad de ſon done &c.) And *C. accepteth the ſaid Rent of B.* and thereupon it was queſtioned, whether or no the Copyhold of C. were gone in Conſcience. Cary's Rep. 8. cites 28. H. Paſch. 24 8. D 30.

6. If a *Copyholder joins with his Ld. in a Feoffment of the Manor*, the Copyhold is thereby extinct; agreed per tot. Cur. Godb. 11. pl. 16 Eliz. C. B. Anon.

7. *Tenant by Copy took a Leaſe for 21 Years of the Manor*; Shute Baron held, that upon the Expiration of the 21 Years the Copyhold is not determin'd; for tho' the Copyholder has only an Eſtate at Will at the Common Law, yet he has an Eſtate of Inheritance by the Cuſtom of the Manor, which is not determin'd by the Acceptance of the Leaſe for * Godb. 101. pl. 117. Mich. 28 and 29 Eliz. S. P. but Anderſon Ch. J. held,

for Years; for * if a ſurrender is made of a Copyhold into the Hands of the Leſſee for Years, to the Uſe of the Leſſee for Years, and his Heirs, and the Years expire, yet he ſhall have Admittance to the Copyhold. Sav. 70, 71. pl. 146. Paſch. 25 Eliz. in Scacc. Anon.

Ch. J. held, that in ſuch Caſe the Copyhold is extinct; for the Eſtate in the Copyhold is not of Right, but an Eſtate at Will, tho' Cuſtom and Preſcription had fortified it. ——— S. P. Arg. ſaid to have been adjudged. Cro. J. 84. pl. 8. ——— Godb. 101. pl. 117. Mich. 28 and 29 Eliz. C. B. Wray ſaid it had been reſolved by good Opinion, that if a Copyholder accepts a Leaſe for Years of the Manor, *the Copyhold is extinct for ever.* ——— Supplement to Co. Comp. Cop. 73. S. 8. S. P. ——— Cro E. 7. pl. 5. Trin. 24 Eliz. C. B. Anon. Mead ſaid it was adjudg'd in **Newport's Caſe**, that by taking a Leaſe of the Manor the Copyhold was extinct. ——— Mo. 185. pl. 330. Mich. 26 Eliz. S. P. the Court held the Copyhold gone for ever, and that the Leſſor being Lord ſhall gain it after the Leaſe to himſelf; and Meade J. cited it as adjudg'd in C. B. Hide v. Newport ——— 4 Rep. 31. b. 24. cites Paſch. 17 Eliz. Hyde's Caſe adjudg'd that the Copyhold has no Continuance; But ſays it was reſolved in the ſame Caſe, that ſuch Leſſee may regrant the Copyhold again to whom he will, for the Land was always demiſed or demiſable.

8. If a *Copyholder ſues Execution of a Statute againſt the Ld.* of the Manor, *and has the Manor in Execution, and afterwards levies the Debt,* his Intereſt in the Copyhold remains; per Manwood Ch. B. Sav. 71. pl. 146. Paſch. 25 Eliz. in Scacc. Anon.

Gilb. Treat. of Ten. 287. 288. cites S. C. and ſays, that the Conuſee being Lord for the Time may make Voluntary Grants of his own Copyhold Lands as well as of others that come into his Hands; for tho' they are not Copyholder's (nor are they ſo when Copholds eſcheat) yet they have Copyhold Lands that have been demiſable time out of mind.

9. The Lord *granted the Freehold of a Copyhold to a Stranger*; the Copyholder being in Poſſeſion *releaſed* to the Grantee all his Right in the Land; Per. Anderſon Ch. J. this does not extinguiſh the Copyhold. Cro. E. 21. pl. 2. Trin. 25 Eliz. C. B. Anon.

For the Land remained Copyhold and the Cuſtom is not taken away. Cro. J. 126. Laſhmer v. Avery ——— Gilb. Treat. of Ten. 304 cites S. C. and the ſame Diverſity — Otherwiſe if it had been to the Copyholder himſelf. Cro E. 24. pl. 3. Hill. 26 Eliz. C. B. Stockbridges Caſe. —— Supplement to Co. Comp. Cop. 73. S. 8 cites S. C.

10. *Husband and Wife Copyholders to them and their Heirs*; the *Husband* for Money *obtains an Eſtate of Freehold to him and his Wife, and the Heirs of their Bodies.* The *Baron died, leaving Iſſue*; the *Wife* entered, and *ſuffered a Common Recovery. The Heir entred by the Statute of* 11 *H.* 7. and agreed that his Entry was Lawful, for that the Copyhold, by the Acceptance of the new Eſtate, was extinguiſhed. Cro. E. 24. pl. 3. Hill. 26 Eliz. C. B. Stockbridge's Caſe.

Co. Comp. Cop. 73. S. 8. cites S. C. ——— Gilb. Treat of Ten. 286. cites S. C.

11. A *Copyholder* in Fee *took a Leaſe for Years of the Manor.* Reſolv'd the Copyold was Extinct for ever, and not only during the Leaſe. Mo. 185. pl. 330. Mich. 26 and 27. Eliz. Hide v. Newport.

S. P. cited as adjudged Paſch. 17 Eliz. in Hyder's Caſe 4 Rep. 31. b. in pl. 24. ——— S. C. cited per Cur. 2 Rep. 17. as adjudg'd; for the Copyhold Eſtate and Intereſt for Years of one and the ſame Land cannot ſtand Simul and Semel in one and the ſame Perſon, at one and the ſame Time, without confounding the leſs; And likewiſe they are of diverſe Natures, for which Reaſon alſo they cannot ſtand together in one and the ſame Perſon.

12. Copyhold Lands demiſed to 3 Siſters, Habend' to them for their Lives *ſucceſſive, the firſt accepted a Leaſe to herſelf Remainder to her Husband, and another Remainder to the* 2*d. Siſter.* The 2d, agreed to it in Pais 4 Daies after; Per Shute J. 'tis no good Agreement, becauſe afterwards, but had it been at the making the Leaſe it had been a full Extinguiſhment; Per Clench J. the Entry of the Youngeſt is lawful notwithſtanding the Life of the Eldeſt, but Gaudy J. contra, and Judgment againſt the Younger. 2 Le. 73. pl. 97. Trin. 28 Eliz. B. R. Curtis v. Cottle.

Gilb. Treat. of Ten. 285. cites S. C. and ſays that this Judgment might be given and the firſt Point be left undetermined; for if her Copyhold Eſtate were extinct by Acceptance of the Remainder, then to be ſure her Entry was not lawful, and if it were not determined, yet it was held the Younger Siſter's Remainder could not

not take Place, becauſe according to Podger's Caſe, the Remainder was not to commence till after the Eſtate for Life ended; ſed quære farther, whether the Youngeſt Siſter's Remainder be not in this Caſe deſtroyed? for the Eſtate for Life of the Eldeſt Siſter is utterly gone; for the Lord having made a Leaſe, can take no Advantage of the Forfeiture, and then the Remainder not commencing when the particular Eſtate ends, it ſeems it can never commence, for there is as much Reaſon to deſtroy contingent Remainders of Copyholds, as Freehold Eſtates, and this is not like the Caſe where the Lord ſeiſes the particular Eſtate as a Forfeiture, for there it remains (as it ſeems) to ſupport Remainders.

13. Whereſoever a *Copyhold is become not demiſeable by Copy*, either by the Act of the Lord; by the Act of the Law, or by the Act of the Copyholder himſelf, it is extinguiſhed for ever. Co. Comp.Cop. 66. S. 62.

14. If a *Copyholder with Licence makes a Leaſe for Years to a Straner, or without Licence makes a Leaſe for Years to the Land*, the Copyhold is not hereby extinguiſhed, and yet it is not demiſeable by Copy. Co. Comp. Cop. 66. S. 62.

15. So if a *Copyholder intermarries with a* Feme *Signioreſs*, this is a Suſpenſion only of the Copyhold, but no Extinguiſhment. Co. Comp. Cop. 66. S. 62.

16. So if the *Interruption* be *tortious, as the Ld. be diſſeiſed*, and this Diſſeiſor ſeiſed; *or* if *the Land be recovered, by falſe Verdict, or erroneous Judgment*, and after the Land is *recontinued*, it is not extinguiſhed but may be granted again by Copy, for Non valet impedimentum quod de Jure non ſortitur Effectum, & Quod contra Legem fit, pro infecto habetur. Co. Comp. Cop. 66. S. 62.

17. A Feme ſole was Lady of a Manor, to which were divers Copyholders, *One of the Copyholders did marry with the Seignioreſs* of the Manor. It was the Opinion of the Juſtices, that the Intermarriage was only a Suſpenſion of the Copyhold, and not an Extinguiſhment of it; But afterwards they *joined in ſuffering a Common Recovery* of the Land, and upon that their Act it was Reſolv'd, that the Copyhold was extinguiſhed. Supplement to Co. Comp. Cop. 73. S. 8. Anon.

S. P. The *Common Recovery* was *to the Uſe of themſelves for Life, Remainder over*, and it was held by Anderſon, Mead, and Periam, that the Copyhold was Extinct, for by the Recovery the Baron had gain'd an Eſtate of Freehold, but they all held that *by the Intermarriage it was only ſuſpended* Cro. E. 7. pl. 5. Trin. 24 Eliz. C B. Anon.——Gilb. Treat. of Ten. 288. cites S. C. for by Suffering the Recovery the Lands were convey'd by Common Law Conveyance, and ſo the Cuſtom was broke.

18. The *Queen ſeiſed of the Manor of D. made a Leaſe thereof for Years to J. S. excepting the Trees. King James granted the Reverſion to the Plaintiff* the *Cuſtom of the Manor was, that a Copyholder of the Manor might top and Lop Trees.* The Defendant being a Copyholder, cut Trees for Firewood, for which Treſpaſs was brought; Reſolv'd, that the Action did not lie, becauſe the Copyholder was in by *the Cuſtom* which *was paramount the Exception of the Trees in the Leaſe*, and the Exception ſhould not hinder the Cuſtom, altho the Copyholder came to his Eſtate after the Exception. Mo. 811. pl. 1098. 1 Jac. Swain v. Beckett.

8 Rep. 63. b. Swain's Caſe. S. C. The Eſtate of a Copyholder that comes in by a Voluntary Grant is *not derived* out of the Eſtate or Intereſt of the Lord of the Manor, for he is only an Inſtrument to make the Grant, but *the Cuſtom* of the Manor after the Grant made eſtabliſhes and *makes it firm* to the Grantee, ſo that tho' the Grant be new, yet the Title of the Copyholder is ancient, and ſo ancient that this by force of the Cuſtom exceeds the Memory of Man and ſuch Grantee ſhall have *Eſtovers &c.* to which the Copyholders before were intitled.——Copyholder that comes in by voluntary Grant ſhall not be *ſubject to the Charges* or Incumbrances of the Lord before the Grant. 8 Rep 63. b. in Swains Caſe.——Brownlow 231, 232 S. C. adjudged.——Supplement to Co. Comp. Cop. 72. cites S. C. and the Lord is but an Inſtrument to make the Grant.——Gilb. Treat. of Ten. 193. cites S. C. accordingly; and therefore if Copyholders have uſed to have Common in the Lord's Waſte or Eſtovers in his Wood, or any other Profit apprender in any other Part of the Manor, and the Lord alien the Waſt or Wood by Feofment or Fine, and then grant an Eſtate by Copy, the Copyholder may take the Profits in the Hands of the Alienee, for the Cuſtom unites the Incident to the Principal, as to the Copyholder who claims, paramount the Severance. If the Alienation be by Fine, and he does not claim within 5 Years, it ſeems he is barred. This proves that the Copyholder claims by Cuſtom, not by the Lord, for if he did the Feofment would bar him of his Common.

19. If there be *Leſee for Life*, the *Remainder for Life of a Copyhold*, and the 1st. *Tenant for Life purchaſeth the Freehold of the Copyhold*, and afterwards *levieth a Fine* thereof and 5 *Years paſs*, it was adjudged, that in the Caſe by the Fine levied the Copyhold was not gone nor deſtroy'd, and that this *Fine was not a Bar to him who was in Remainder in Life of the Copyhold.* Supplement to Co. Comp. Cop. 73. S. 8. Mich. 9 Jac. in C. B. adjudged accordingly.

Jo. 41. Bleverhaſſet v. Humberſtone, S. C. adjudg'd, that the Copyhold was extinguiſhed;

20. In Ejectione Firmæ brought by W. B. againſt R. H. for Land in P. upon a Leaſe made by J. B. upon a ſpecial Verdict found, it was reſolved, that when a *Copyholder bargains and ſells his Copyhold to the Lord* of a Manor *which has the Manor in Leaſe for Years*, that thereby the Copyhold Eſtate is extinguiſhed. Hutt. 65. Trin. 19 Jac. Blemmerhaſſet v. Humberſtone.

for though a Copyholder cannot transfer to another but by Conſent of the Lord, and Surrender in Court, and Admittance, yet he may releaſe to the Lord, becauſe this is no Prejudice to the Lord, for at Common Law he is only Tenant at Sufferance.

Win. 66. Paſch. 21 Jac. C. B. Haſſet v. Hanſon,

21. A Copyholder *bargained and ſold his Copyhold Eſtate to the Leſſee of the Manor*; Reſolved, That the Copyhold Eſtate is extinguiſhed. Hutt. 65. Trin. 19 Jac. Blemmerhaſſet v. Humberſtone.

S. C. —— Jo. 41. pl. 2. Bleverhaſſet v. Humberſtone, S. C. and the whole Court agreed that this was an Extinguiſhment of the Copyhold. ——— Hutt. 65. S. C. ſays it was agreed here, that this Copyhold is not ſo extinct but the Lord (which is the Leſſee for Years) Dominus pro Tempore may grant it De Novo by Copy. —— Gilb. Treat. of Ten. 284, 285. cites S. C. & S. P. for the Leſſee is Lord of the Manor, and ſo the Lands are always demiſable by Copy, and that there can be no Difference between this Caſe, and where the Manor is conveyed away, together with the Copyhold, at one and the ſame Time

22. If a Copyholder *releaſes to the Lord* it is an Extinguiſhment of the Copyhold, though it be contrary to the Nature of a Releaſe to give a Poſſeſſion; Per Hobart Ch. J. Hutt. 65. Trin. 19 Jac. in Caſe of Blemmer-Haſſet v. Humberſtone.

23. *H.* 8. *was ſeiſed of the Manor of Chinckford* in Eſſex *in Fee*, and *built a new Houſe* there, call'd Lorrimore, *and granted the Cuſtody thereof* to Sir John Gates *for Life*, *by the Word Conceſſimus*, *with the Cloſe call'd Scales*, *being Parcel of the Copyhold of the ſaid Manor*, *but without reciting that it was Copyhold*, and this was for exerciſing his ſaid Office. The King died. Sir John Gates died; then Queen Mary granted the ſaid Manor in Fee to Suſan Tongue, who leaſed the Manor for Years to one Lee, and he, before the Expiration of his Leaſe, granted this Cloſe to Robert Lee in Fee, according to the Cuſtom of the Manor; Robert Lee's Leaſe expired, and Robert Lee leaſed it to Field, the Plaintiff, at Will, and the Defendant, as Heir to Tongue, enter'd &c. The Queſtion was, whether the Grant of the King, without reciting that this Cloſe was Copyhold, had extinguiſhed the Copyhold Cuſtom, or not, and enfranchiſed the Cloſe? Newdigate J. held the Copyhold deſtroy'd, but Glyn Ch. J. held, that it was only ſuſpended during the Life of Sir John Gates the Patentee, and Judgment by Glyn Ch. J. and Warburton was given for the Plaintiff. 2 Sid. 17. 35. 81. 137. Hill. 1658. B. R. Field v. Boothby.

24. If A. is Tenant in *Tail of a Copyhold*, and it is found that *by the Cuſtom* it *cannot be barred but by Seiſure of the Lord*, *& non aliter nec alio modo*, and *A. accepts a Feoffment* of his Copyhold Lands from the Lord that has the Inheritance and then makes a Feoffment thereof, and then levies a Fine with Proclamations, and ſuffers a Common Recovery, the Copyhold is ſuſpended, but not deſtroyed, quoad his Iſſue; But if *A. afterwards levies a Fine of the Land*, though the Copyhold Intereſt cannot paſs, yet it may be barred and extinguiſhed by the Fine. Adjudged. Cart. 6. 22, 23. &c. Paſch. 17 Car. 2. C. B. Taylor v. Shaw.

25. *Tenant*

25. *Tenant for Life of a Manor with Power to make Leaſes makes a Leaſe of a Copyhold*, this deſtroys it for ever; Per Holt Ch. J. Ld. Raym. Rep. 270. Mich. 9. W. 3. in Caſe of Winter v. Loveden. Freem. Rep. 508. pl 682. S. C. *though if a Leſſee of a Manor makes Leaſes of the Copyholds, it does not extinguiſh them, yee when a Leſſee by Virtue of a Power demiſeth*, this is an abſolute Deſtruction of them, becauſe the Power is derived out of the Fee, and ſo it is all one as if Tenant in Fee-ſimple of a Manor made Leaſe.

26. *A. is a Copyholder in Tail*, the *Lord grants the Freehold of the Copyhold to him in Fee*; the Copyhold tho' intailed is extinct. 3 Wms's Rep. 9. Trin. 1724. Dunn v. Green.

[G. d] *What* ſhall be ſaid *an Extinguiſhment of the Incidents* of a Copyhold. [*Frank-Bank.*]

This in Roll is Letter (I) in fol. 510.

1. **If there be a Cuſtom of a Manor that if Copyholders for Life die ſeiſed, their Wives ſhall have it during their Widowhood,** and A. being a Copyholder for Life **of a Tenement, the Lord of the Manor** conveys the Freehold **and Inheritance** of the Copyhold Tenement of A. by the Procurement of A. to J. S. a Stranger, and to his Heirs during the Life of A. the Remainder to B. the Wife of A. for Life, **the** Remainder in Fee to A. **and** after A. grants the Remainder to W. his Son, **and after** B. the Wife of A. dies, **and** A. takes C. to Wife, and dies ſeiſed; **the** Widowhood of C. is not extinguiſhed **by the Purchaſe and Conveyance of A. her Husband, for the Freehold being in J. S. a Stranger, during the Life of A. the Eſtate of A. was not extinguiſhed, and by Conſequence this excreſcent Eſtate, ſcilicet the Widowhood, continues. Hobart's Rep. 244. between** *Howard and Bartlet.* Hob. 181. pl. 218. S. C. reſolv'd —— 2 Roll Rep. 178. Trin. 18 Jac B. R. Walter v. Bartlett. Haughton J. held, that tho' the Frank Tenement be ſevered from the Manor yet he may properly be ſaid to be a Copyholder of the Manor; for he ſhall pay his ancient Services to the Lord of the Manor; and Doderidge J. ſaid, that the Eſtate which the Tenant had at the Time of his Death is not a New, but an ancient Eſtate, whereupon it was adjudg'd, that the Feme ſhall have her Widow's Eſtate —— Cro. J. 573. pl. 1. Waldoe v. Bartlet S. C. adjudged accordingly; for the Cuſtom is continued Quoad her, tho' the Frehold be ſevered from the Manor; for the Lord's Act ſhall not prejudice the Copyholder's Eſtate, and it is a Privilege and Benefit annex'd by the Cuſtom to his Eſtate, that his Feme ſhall have it after his Death, which ſhall not be deſtroy'd as long as the Copyhold Eſtate remains undeſtroy'd; and the Copyhold Eſtate here remains notwithſtrnding the Severance from the Freehold, and not only as a Privilege, but as a mere Copyhold. —— Ibid. ſays it was reſolv'd in the Court of Wards, by the 2 Ch. J. and Ch. B. that the Copyhold remain'd &c. [this reſerves to the Caſe in Hob.] —— Palm. 111. Walder v. Barkley S. C adjudged. —— And a Difference was taken in the Books between Incidents to the Tenancy, and Incidents to the Seigniory, that the firſt are not deſtroy'd, but the laſt are, and tho' it be deſtroy'd between them 2, yet it ſhall be in Eſſence as to this Purpoſe. —— Jenk. 318. pl. 15. S. C. and the Eſtate of B. hindred the Deſtruction of the Copyhold, and tho' by the Feoffment it be deſtroy'd as to the Lord, yet it is not as to the Copyholder.

2. So **if A. be a Copyholder in Fee, where the Cuſtom is for their Wives to have their Widowhood** if the Baron dies ſeiſed, and the Lord grants the Freehold **and Inheritance** over to a Stranger; **this ſhall not deſtroy the Widowhood. Hobert's Reports** 244. Hob. 181. pl. 218. Howard v. Bartlett, but as it is put there it ſeems to intend that if the Freehold had been granted in Fee during the Life of A. it would not deſtroy the Widow-hood.

3. But

Fol. 511

3. But in the ſaid Caſe, if the Cuſtom be that the Wife ſhall be admitted before ſhe ſhall have her Eſtate, there ſhe muſt loſe it, becauſe the cuſtomary Court, which ſhould relieve her, is gone as to her, becauſe her Eſtate is altogether eſtranged from the Manor. Hobart's Reports 244.

Hob. 181. pl 218. Howard v. Bartlet ſeems to be S C. & S. P. ſeems admitted.

2 Le. 208. pl. 257. Beale v. Langley, S. C and the whole Court held, that the Copyhold did remain; for otherwiſe by ſuch Practices of the Lords all the Copyholds in England might be defeated, and if any Prejudice comes to the Lord by this Act, it is of his own doing, and ſhall not be relieved againſt his own Act. Periam J. held, that by this Leaſe the Lord had deſtroyed his Seigniory, and loſt the Services as to this Land; And Windham J. ſaid the Lord had deſtroyed the Cuſtom as to the Services, but not as to the Cuſtomary Intereſt of the Tenant; But Anderſon Ch. J. held, that the Rents and Services remain, and if the Copyholder after ſuch Leaſe commits Waſte, it is a Forfeiture to the Lord, and that will fall in Evidence at a Trial, tho, ſuch Waſte cannot be found by an ordinary Preſentment, and the ſame Law which allows the Copyholder his Copyhold Intereſt againſt this Leaſe, will allow to the Lord his Rents and Services; And he ſaid, that the Lord ſhall have the Rents and Services, and not the Leſſee. But the Reporter ſays, Quod Mirum, againſt his one Leaſe!

4. *A. was Lord of* a Manor of whom Black Acre is held by B. by Copy of Court Roll in Fee according to the Cuſtom. *A. made Feoffment of Black Acre to a Stranger.* B. dies. Though the Feoffee has not any Court ſo that the Heir of B. cannot be admitted, nor the Death of his Anceſtor preſented, becauſe but one Tenant, yet Per Cur. the Copy ſhall bind the Feoffee and the *Ceremony of Admiſſion not neceſſary* in this Caſe, and the Lord by his own Act has loſt his Advantages of *Fines*, *Heriots*, *and other ſuch Caſualties*. 4 Le. 230. pl. 364 Mich. 29 Eliz. C. B. Bell v. Langley.

5. A Copyholder had *Common by Uſage* in the Waſte of the Lord as to his Meſſuage and Lands belonging; *The Copyhold comes to the Lord who* after *grants the ſame to the Copyholder cum Pertinentiis.* In this Caſe it was holden, That theſe Words, viz. (cum Pertinentiis) could not create a new Common, and the Common firſt holden was by Cuſtom annexed to the cuſtomary Eſtate, and was abſolutely extinguiſh'd. Co. Comp. Cop. 73. S. 8.

Gilb. Treat. of Ten. 286. cites S. C. for they are not Copyhold in his Hands.

6. If Copyhold Land *eſcheats*, the Chief Juſtice ſaid he knew not how it could be call'd Copyhold Land afterwards unleſs it be becauſe there is a Power in the Lord to regrant it as Copyhold, for if by the Cuſtom, the Wife was dowable of the Intierty or Moiety, and ſuch cuſtomary Copyhold eſcheats, and he dies, the Wife ſhall not be endow'd, becauſe as to her the Cnſtom is extinct. 2 Sid. 19. Mich. 1657. obiter.

(H. d) Forfeiture. What ſhall be a Determination of the Copyhold Eſtate by Forfeiture.

Godb. 175. pl. 241. Meers v. Ridout S. C. but not exactly S. P.

1. THERE was a *Tenant for Life of a Copyhold.* The *Lord granted the Reverſion* of a Copyhold after the Determination of the particular Eſtate to another for 20 Years. Afterwards the Copyholder, who was *Tenant for Life, by Deed made a Leaſe for Life of his Copyhold, and made Livery*, which was a Forfeiture of his Copyhold Eſtate. It was of the Opinion of the Juſtices in that Caſe, that this Act of the Tenant for Life was not a Determination or an Extinguiſhment of the Copyhold; For although it was a Determination of the particular Eſtate of the Copyholder, and that he in the Remainder might enter; yet the Land

Land remained Copyhold as it was before. Supplement to Co. Comp. Cop. 73. S. 8 cites Paſch. 8 Jac. in C. B. Moor v. Rideval.

2. When a Copyholder *makes Feoffment*, or does any other Act which was utterly *inconſiſtent with his Eſtate*, there the Copyhold is abſolutely determined, and Advantage of it may be taken at any Time; otherwiſe in Caſe of a *Leaſe for Years*, for the Copyhold remains a Copyhold notwithſtanding ſuch Leaſe; otherwiſe of *Leaſe for Life*; but if he will accept a *Leaſe for Years from another* it is a Determination of his Eſtate; Per Treby. Ch. J. Lutw. 803. Trin. 10 W. 3. in Caſe of Eaſtcourt v. Weekes.

[I. d] What ſhall be a *ſufficient Lord to give Licence.*

This in Roll is Letter (K) in fol. 511.

1. A Lord at Will of a Copyhold Manor cannot give Licence to a Copyhold Tenant to make a Leaſe for Years, though he may grant a Copyhold for Life according to the Cuſtom. Hill. 8 Ja. B. between *Pettis and Debbans*, per Curiam. The Lord cannot give Licence to make a Leaſe for a longer Time in the Tenancy than he has in the Seigniory. 2 Brownl. 40. Hill. 8 Jac. C. B. Petty v. Evans, S. C. —— Gilb. Treat. of Ten. 282. cites S. C. & S. P. for he cannot diſcharge the Lord's Intereſt any farhter than his own Intereſt in the Manor goes, and therefore if the Lord, that gives the Licence has but a particular Intereſt in the Manor, the Licence is determined upon the Determination of the Lord's Intereſt.

2. If a Lord for Life of a Copyhold Manor gives Licence to a Tenant to make a Leaſe for Years, this Leaſe ſhall not continue longer than the Life of the Lord. H. 8 Jac. B. between *Pettis and Debbans*, per Curiam. 2 Brownl. 40. Petty v. Evans, S. C. & S. P. accordingly, though the Copyholder be of Inheritance; for the Inheritance of the Lord is bound by that.

(K. d) Actions in general.
What Action at Law or Suits in Equity one Tenant may have againſt another in reſpect of the ſame Land. Tenant for Life and Reverſion or Remainder.

1. IN 13 R. 2. Fitz. Judgment 7. it is ſaid, that the Heir who is inheritable to the Copy Lands by Cuſtom may recover the ſame by *Plaint in the Court of the Lord, in the Nature of an Aſſiſe of Mort-danceſtor, but* he ſhall *not* have an Aſſiſe *of Novel Diſſeiſin*; And 15 H. 8. Tenant by Copy 24. the Heir of a Copyholder, Tenant in Tail, ſhall recover the Lands in a *Formedon in the Diſcender*. Supplement to Co. Comp. Cop. 78 S. 12. cites 13 R. 2. Fitz. Judgment 7. & 17 H. 8. Tenant by Copy, 24.

2. A *Copyholder made a Leaſe for Years by Indenture warranted by the Cuſtom*; it was adjudged, that the Leſſees ſhould maintain *Ejectione Firmæ*, although it was objected, that if it were ſo, then if the Plaintiff doth Supplement to Co. Comp. Cop. 85. S. 20. cites S. C.

recover, he ſhould have Habere Facias Poſſeſſionem, and then Copyholds ſhould be ordered by the Laws of the Land. Arg. cites Mich. 14 & 15 Eliz. Le. 4. pl. 8. Anon.

3. *Copyholder makes a Leaſe for Years according to the Cuſtom*, this is an Eſtate upon which an *Ejectment is* maintainable. Mo. 128. pl. 276. [per Cur. as it ſeems] cites 15 Eliz. C. B. and ſays it was ſo adjudg'd in C. B. 4 H. 6.

Supplement to Co. Comp Cop. 75. S. 10. cites S. C. —— Gilb. Treat. of Ten. 269 cites S. C. and ſays the Reaſon ſeems to be, becauſe the Law caſts the Eſtate upon him by Deſcent, and ſo enables him to make a Leaſe, leaſt otherwiſe, there being no Court held in a great while, he ſhould loſe the Profits of the Lands, and ſo the Law caſts the Eſtate upon him, and helps out the Defect of an Admiſſion, but yet only pro Tempore, and therefore the Heir muſt be admitted; for an Eſtate at Will is not in itſelf deſcendible, therefore where the Heir is guilty of a ſupine Negligence, the Reaſon, for the Law's caſting the Eſtate upon him, ceaſes, and it will reckon no Eſtate in him, and conſequently he cannot demiſe.

4. If a *Copyholder dies*, and *his Heir enters, and leaſes it* to J. S. who enters and takes the Profits, and is ejected, he may bring an *Ejectionæ Firmæ without his Leſſor's being admitted, or Preſentment that he is Heir*, no Court being held for 30 Years, but when a Court was held he came and pray'd Admittance, which the Steward denied. Le. 100. pl. 128. Paſch. 30 Eliz. B. R. Rumney v. Eves.

4 Le. 30. pl 84. S. C. in toridem Verbis.

5. A *Copyholder of Inheritance of a Manor in the Hands of the King is ouſted.* It was held in ſuch Caſe, that *he has not gained any Eſtate ſo as* he may make a Leaſe for Years upon which *his Leſſee may maintain Ejectment*, but he has only a Poſſeſſion againſt all Strangers. 3 Le. 221. pl. 294. Paſch. 30 Eliz. B. R. Anderſon v. Hayward.

Supplement to Co. Comp. 86. S. 20. cites S. C. accordingly. —— Gilb. Treat. of Ten. 199. cites S. C. & S. P. accordingly, for the common Law warrants his Term, and therefore gives him Remedy in Caſe he be ouſted; and ſays, that ſo it is if the Lord gives Licence to make a Leaſe, the Leſſee ſhall have an Ejectment, and cites Cro. E. 461. [pl. 8. Hill. 38 Eliz. B. R. Haddon v. Arrowſmith.]

6. *Leſſee of a Copyholder for a Year ſhall maintain an Ejectment*, for ſince his Term is warranted by Law by Force of the general Cuſtom of the Realm, it is reaſonable, that if he be ejected he ſhall have an Ejectment; Reſolv'd. 4 Rep. 26. a. b. Trin. 30 Eliz. B. R. the firſt Reſolution in Caſe of Melwich v. Luter.

Cro. E. 462. pl. 8. Arg. S. P. ſaid to have been adjudged. —— Cro. C. 304.

7. If *Copyholder makes a Leaſe which is not according to the Cuſtom* of the Manor, yet this Leaſe is good, ſo that the *Leſſee may maintain an Ejectione Firmæ*, for between the Leſſor and Leſſee, and all other except the Lord of the Manor, the Leaſe is good. Owen 17 Trin. 36 Eliz. B. R. Downingham's Caſe.

Paſch. 9 Car. B R. the Court cited Hill. 18 Jac. the Caſe of **Street v. Mirral**, where it was adjudged a good Leaſe againſt all but the Lord. —— Ibid. 305. cites S. C. and ſays it was ſo reſolved 28 Eliz. B. R. and that the Book of 12 E. 4. 13. is direct in the Point.

Supplement to Co. Comp. Cop. 85. S. 20. cites S. C. accordingly.

8. *Ejectione Firmæ.* The Parties were at Iſſue; it appear'd upon the Evidence, that the *Plaintiff was Leſſee for 3 Years of a Copyhold*, and the *Cuſtom of the Manor was proved to be, that a Copyholder might let the Land for 3 Years.* It was the Opinion of Anderſon Ch. J. that the Leſſee of a Copyholder cannot maintain Ejectione Firmæ, but if he might, he ought to ſhew his Leſſor's Eſtate, and his Licence, or a ſpecial Cuſtom to warrant the Leaſe. Cro. E. 469. pl. 20. Hill. 38. Eliz. B. R. Wells v. Partridge.

Gilb. Treat. of Ten. 199. cites S. C. & S. P and ſays, that

9. *Leſſee of a Copyholder* cannot maintain *Ejectment* at Common Law, Per tot. Cur. præter Beaumont; for the Nature of Copyhold Land is to be recover'd only in the Copyhold Court by Plaint according to his Caſe, and the Law takes no Conuſance of them but as Tenants at Will; and

and though the Cuſtoms are pleadable and allowable at our Law, yet no Action can be maintain'd for them at Common Law, nor by any Writ of the Queen's. Cro. E. 483. pl. 19. Trin. 38 Eliz. C. B. Stephens v. Elliot.

this is generally ſo, but then this *muſt be underſtood of a Leaſe without* of adjudging

cut Licence, and for more than a Year; for by the Licence the Lord gives up his Power about the Leſſee's Eſtate, becauſe when he has given Licence, it ſeems that he has an Eſtate at Common Law, tho' of Copyhold Lands.

10. A Copyholder *by Licence* from the Lord to let his Land *for 21 Years leaſed it to the Plaintiff for 3 Years, who* entred, and being ejected *brought an Ejectment*; all the Barons held clearly, that the Ejectment was well brought, for the Leaſe is good between the Parties, and all others but the Lord, and in this Caſe it is good againſt him by reaſon of the Licence, and that the making a Leaſe for 3 Years is warranted by the Licence for 21 Years, and this Action well maintainable thereupon at the Common Law. Cro. E. 535. pl. 68. Mich. 38 & 39 Eliz. in the Exchequer. Goodwin v. Longhurſt.

Gilb. Treat. of Ten. 200. cites S. C.

11. If a Copyholder makes a Leaſe for Years his Leſſee ſhall maintain an Ejectment; adjudg'd. Mo. 539. pl. 709. Hill. 39 Eliz. B. R. Stoper v. Gibſon.

If the Leaſe is warranted by the Cuſtom, the Leſſee may

maintain Ejectment, per all the Juſtices; and Popham held, that he may maintain it, tho' the Leaſe is not warranted by the Cuſtom. Mo. 569. pl. 776. Sprakes's Caſe.

12. A Copyholder made a *Leaſe for a Year, excepting one Day, which was warranted by the Cuſtom.* The Leſſee being ouſted brought *Ejectment*; adjudg'd that it well lies; And per Popham, if there was no Cuſtom, yet it ſhould be good againſt all but him who had the Inheritance and the Freehold. Cro. E. 676. pl. 4. Trin. 41 Eliz. B. R. Sparkes's Caſe.

Mo. 569. pl. 776. S. C. accordingly. —— Gilb. Treat. of Ten. 201. after taking Notice of

the ſeveral Caſes for and againſt the Leſſees maintaining an *Ejectment* ſays, that all thoſe Caſes, that are for declaring upon the Cuſtom, are againſt it; and that this Opinion is ſupported by theſe Reaſons, that when a Copyholder makes a Leaſe he determines his Will, and therefore the Lord may enter, and if the Leſſee enters he is a Diſſeiſor, and Ld. Coke's ſaying that a Leſſee for a Year may have Ejectment excludes all others from having it.

13. If a Copyhold be granted *for years by Copy*, ſuch Copyholder ſhall not maintain *Ejectment* at the Common Law; Per Popham. Cro. E. 676. pl. 4. Trin. 41 Eliz. B. R. in Sparks's Caſe.

Mo. 569. pl. 776. Sprakes's Caſe, S. C. but S. P. does not appear.

14. *Ejectment* does not lie of a Copyhold unleſs the *Plaintiff declares of the Cuſtom, the Leaſe, and the Ejectment.* Mo. 679. pl. 927. Hill. 45 Eliz. C. B. Gregory v. Harriſon.

Gilb. Treat. of Ten. 200. S. P. as to the Cuſtom, but ſays

that ſome hold, that this muſt come on the other Side, and that in this Diverſity of Opinions it will be good to ſee what is plain, that ſo we may more eaſily determine and know what is uncertain; and firſt, it ſeems plain that a Leſſee for a Year of Copyhold Land may have an Ejectione Firmæ, and it is very plain alſo, that where a Copyholder may make a Leaſe by Cuſtom, ſuch Leſſee may have a Leaſe by Cuſtom, and ſuch Leſſee may have Ejectment. But the Queſtion is, whether ſuch Leſſee need mention the Cuſtom in his Count? It ſeems alſo to be plain, that Leſſee by Licence may maintain the Action for the Reaſon before; but the main Doubt of the Caſe is, whether a Leſſee without Licence may maintain Ejectment upon that Reaſon, that the Leaſe is good againſt every Body but the Lord?

15. An Action brought upon an *Ejectment*; the *Plaintiff* was nonſuit upon his own Evidence, becauſe he *declar'd upon a Demiſe made for three Years*, and *it was confeſſed by the Plaintiff, that the Lands were Copyhold Lands, and that the Plaintiff had not Licence to demiſe for 3 Years, neither could he prove that by any Cuſtom he could demiſe them for 3 Years without a Licence*, and ſo the *Leſſor was taken for a Diſſeiſor*, by the Opinion of the Court. Brownl. 133. Trin. 9 Jac. Cramporn v. Freſhwater.

Supplement to Co. Comp. Cop. 86. S. 20. cites S. C.

16. Where

16. Where Copyholders ought to *preſent a Surrender*, *and will not* at the next Court, Caveat Emptor, which means that he has no Remedy. Arg. Roll. R. 125. pl. 7. Hill. 12 Jac. cites 5 Rep. 84. Periman's Caſe.

17. If the Cuſtom is, that the Surrender ſhall be to one of the Tenants of the Manor and a *Tenant Will not take a Surrender*, no Action lies; Per Coke and Haughton. Roll Rep. 126. pl. 7. Hill. 12 Jac. B. R. Ford v. Hoskins.

Chan. Caſes 271. S. C. but nothing appears there as to Point of Waſte.

18. A. ſeiſed in Fee of Copyhold Lands ſurrendered them to the Uſe of B. on Condition that C ſhould enjoy the ſame for Life. A. died. C. entered and *committed Waſte* on the Lands and the Timber. On a Bill by B. to ſtay Waſte, it was decreed, that no Relief could be for Waſte done, it appearing that C. *Tenant for Life*; *had paid off* 100 l. *Mortgage on the Premiſſes*; but an Injunction againſt him to ſtay all *future Waſte*, and B. to pay 2 thirds of the 100 *l.* and C. the other 3d. Fin. R. 220 Trin. 27 Car. 2 Corniſh v. New.

19. If *Tenant for Life does Waſte*, as in pulling down Part of the Houſe, and carrying away the Stones and the Timber, an Action on the *Caſe* lies for the Remainder-man in Fee of the Copyhold, *ad Exhæredationem* of the Plaintiff; per Pemberton Ch. J. and Levinz J. againſt Windham and Charlton Juſtices. 3 Lev. 130. Trin. 35 Car. 2. C. B. Jefferſon v. Jefferſon.

20. A *Writ of Aiel* was brought *in the Court of a Copyhold Manor* to avoid an Eſtate, for that there *had been no Surrender*, *a Poſſeſſion having gone with the Defendant there for 45 Years.* The Court granted a *perpetual Injunction*, for that after ſo long Time a Surrender ſhould be preſumed, and the Rolls may be loſt, and no reaſon the Eſtate ſhould be avoided after ſo long a Poſſeſſion. 2 Freem. Rep. 106. pl. 117 Mich. 1689. Knight v. Adamſon.

Ld. Raym. Rep 43. Brittel v. Bade, S. C.

21. *Ejectment* lies of Copyhold Lands, but a *Writ of Right will not*, by reaſon of the Baſeneſs of the Nature of Copyholds. 1 Salk. 185. pl. 4. 7 W. & M. in C. B. Brittle v Dade.

(L. d) What Suits or Actions lie for the Tenant againſt the Lord.

1. IN Treſpaſs, it was moved that if the Lord *ouſts his Tenant* at Will according to the Cuſtom of the Manor, what Remedy has he? Danby Ch. J. of C. B. thought that he ſhould have Remedy againſt the Lord; For the Lord has done him a Tort by the Ouſter, becauſe the Tenant is as well inheritable to have the Land to him and his Heis, according to the Cuſtom of the Manor, as any Man is to have Land at the Common Law, becauſe he pays a Fine to the Lord when he enters; Littleton ſaid, he ſaw a *Subpæna* brought by ſuch a Tenant againſt the Lord, and it was held by all the Juſtices, that he ſhould recover nothing, becauſe the Entry of the Lord was adjudged lawful, becauſe the Tenant is Tenant at Will, and Writ of falſe Judgment, nor Writ of Right does not lie; But per Danby, he ſhall have *Writ of Right* againſt the Lord, and the Lord cannot juſtify his Entry into the Land. Br. Tenant per Copie &c. pl. 10 cites 7 E. 4. 19.

2. *Treſpaſs of a Cloſe and Houſe broken*, the *Defendant ſaid*, *that the Place where* &c. *is a Houſe and* 20 *Acres of Land*, *which*, *at the time of the Treſpaſs*, *and before*, *was Parcel of the Manor of Dale*, *and that*

R.

R. *Lord of the Manor leaſed to him for Life, by Copy, according to the Cuſtom of the Manor, by which he was ſeiſed in Dominico ſuo ut de Libero Tenemento, according to the Cuſtom of the Manor aforeſaid,* and gave *Colour*; Per Bridges, he ſhall not ſay de Libero tenemonto; Per Brian, he ſhall, according to the Cuſtom &c, ut Supra, quod Cur. conceſſit. Per Bridges, he is only Tenant at Will, and therefore the Lord may put him out; but per Brian, No; For if the Lord puts him out, as long as he does the Cuſtoms and Services he ſhall have *Treſpaſs*; Per Catesby, the Tenant ſhall preſcribe againſt his Lord, and for this Cauſe the Plaintiff demurr'd upon the Plea of the Defendant; Quære, for no more was ſaid thereof. Br. Tenant per Copie, pl. 13. cites 21 E. 4. 80.

3. The Lord cannot at his Pleaſure *put out* the lawful Copyholder, and if he do the Copyholder may have an Action of *Treſpaſs* againſt him, for tho' he is tenens ad voluntatem Domini, yet it is ſecundum Conſuetudinem Manerii. Co. Litt. 60. b.

4. An Action of *Treſpaſs lies againſt the Lord where he cuts down Trees when by Cuſtom they belong to the Tenant*, becauſe this is a mere Perſonal Action, and Damages only are to be recovered. Co. Comp. Cop. 60. S. 51.

5. If the Lord *will not hold a Court to admit* a Tenant, he has no Remedy but in *Chancery*. Cro. J. 368. pl. 1. Paſch. 13. Jac. B. R. Ford v. Hoskins.

Cart. 8. S. C. cited.—Roll R. 195. S. C. & S. P. per Coke Ch. J.

quod fuit Conceſſum, per Cur. in Caſe of Ford v. Hoskins——— 2 Bulſt 336 S. C. and ſo held per tot. Cur. except Dodridge J. who likewiſe afterwards changed his Opinion.———Sid 34. S. P. ——Mo. 842. pl. 1137. S. C. ———He was decreed to hold his Court D. 264. pl. 38.——He is compellable in Chancery, per Doderidge J. 2 Roll R. 274.———Adjudged, that Action on the Caſe lies not againſt the Lord for refuſing to admit a Nominee. 2 Bulſt. 337 ———Reſolved, that the Surrenderor may have Action on the Caſe againſt the Lord for not holding a Court, and admitting the Surrenderee, but the Surrenderor cannot. 2 Bulſt. 217. cites 26 El. Gallaways Caſe ——Supplement to Co. Comp. Cop. 70. S. 4. cites S. C.

6. Where there is Cuſtom of *Frank-Bank*, and the Lord refuſes to admit the Widow, but enters upon her, and ouſts her, ſhe may make a Leaſe for a Year and maintain *Ejectment*. Noy 29. Hill. 15 Jac. B. R. Rennington v. Cole.

7. *Writ* ſhall be directed to the Lord of a Manor, *commanding him to hold a Court*, whereby Juſtice may be done to his Tenants. Arg. 2. Roll. R. 107. Trin. 17 Jac. B. R. Anon.

8. The Defendant, being *Lord* of ſeveral Manors, *did refuſe to hold Courts, and grant Admittances* &c. whereupon the Copyhold Tenants exhibited theis Bill to be relieved, and it was *decreed*, That the Defendant and his Heirs ſhould from Time to Time, as Occaſion ſhould require, procure Courts to be held for the Manors, and ſuffer the Plaintiffs and their Heirs to make Surrenders to ſuch Perſons, and for ſuch Uſes, as the Copyholders ſhould limit and direct, and that the Surrenderees ſhould be admitted accordingly. Nels. Chan. Rep. 12. 6 Car. 1. Moor v. Huntington.

9. If *A. Surrenders to the Lord ea Intentione that he ſhall grant over the ſame to J. S.* If the *Lord will not grant the ſame, A. may reenter*, but *J. S. has no Means to inforce the Lord to grant the ſame over to him*, but he may maintain *Treſpaſs againſt the Lord if he ſuffers A. to re-enter*; and this is the Opinion at this Day. Calth. Reading 61.

Action will not lie againſt the Lord for *not admitting* a Copyholder;

Arg. Carth. 492. Paſch. 11 W. 3. B. R. in Caſe of Greenvel v. Burnell.

(M. d) How Copyholders ſhall implead, or be Impleaded. And where.

Mo. 410. 559. S. C. accordingly by 3 Juſtices, contra Fenner. But at another Day 3 of the Juſtices held the Action maintainable, becauſe the Court Baron cannot hold Plea, nor award Execution of 50 l. Damages, and yet the Damages were well aſſeſs'd there.——Cro. E. 426. pl. 25 S. C. and the whole Court held the Damages well awarded, and that ſhe might well recover ſo much there; For as they may hold Plea of the Land, ſo alſo for the Damages, as far as the Demandant is damnified, and ſhall be well allow'd; Sed adjornatur.

1. *Dower* was recovered in the Lord's Court, *and 50 l. Damages*; no Action of Debt lies at Common Law for the Damages, for on ſuch Judgment no Writ of Error or falſe Judgment lies, but the Remedy is in the Court of the Manor, or in Chancery, and where Feme is to be endow'd by the Cuſtom, (without which there is no Dower of Copyhold) ſhe ſhall have all Incidents to Dower, and ſhall recover Damages by the *Statute of Merton De Viduis* &c. and ſo the recovery of Damages in this Caſe lawful tho' they exceed 40 s. 4 Rep. 30. b. pl. 22. Trin. 37 Eliz. Shaw v. Tompſon.

* Gilb. Treat. of Ten. 315. S. P. cites Supplement to Co Comp. Cop. 143.

2. A *Copyholder cannot in any Action Real*, or that favours of the Realty, or has a Dependance upon the Realty, *implead, or be impleaded in any other Court but in the Lord's Court*, for or concerning his Copyhold. But in Actions that are meerly * Perſonal he may ſue or be ſued at the Common Law. Co. Comp. Cop. 60. S. 51.

3. If a Copyholder be *ouſted of his Copyhold by a Stranger*, he cannot implead him by the King's Writ, but by Plaint in the Lord's Court, and ſhall make Proteſtation to proſecute the Suit in the Nature of an Aſſiſe of Novel Diſſeiſin, of an Aſſiſe of Mortdanceſtor, of a Formedon in the Deſcender, Reverter, or Remainder, or in the Nature of any other Writ, as his Cauſe ſhall require, and ſhall put in Pleg'. de Proſequend'. Co. Comp. Cop. 60. S. 51.

4. If a *Copyholder* be *ouſted by the Lord he cannot maintain an Aſſiſe at the Common Law, becauſe he wants a Frank-Tenement, but* he may have an Action of *Treſpaſs* againſt him at the Common Law; For it is againſt Reaſon, that the Lord ſhould be Judge where he himſelf is a Party. Co. Comp. Cop. 60. S. 51.

5. If in a Plaint in the Lord's Court touching the Title of a Copyholder, the Lord gives *falſe Judgment*, he cannot maintain a Writ of Falſe Judgment, for then he ſhould be reſtored to a Frank-Tenement where he loſt none. Co. Comp. Cop. 60. S. 51.

6. No *Copyholder of baſe Tenure in Ancient Demeſne*, can maintain a *Writ of Droit Cloſe, or* a Writ of *Monſtraverunt*, but Tenants of Frank-Tenure in ancient Demſne can. Co. Comp. Cop. 60. S. 51.

Gilb. Treat of Ten. 315. S. P. cites Co. Comp. Cop.

7. A *Copyholder that may cut down Timber Trees by Cuſtom, by Licence of the Lord makes a Leaſe for Years*, the *Leſſee cuts down Trees*; the *Copyholder* ſhall not have a Writ of Waſte, but *ſhall ſue at the Lord's Court to puniſh this Waſte.* Co. Comp. Cop. 60. S. 51.

8. If a *Feme* dowable by Cuſtom of a Copyhold by Plaint in the Lord's Court, *recovers Dower and Damages, no Action of Debt lies at the Common Law* for theſe Damages, becauſe the Action, tho' it be in it ſelf Perſonal, yet depends upon the Realty. Co. Comp. Cop. 60. S. 51.

9. If a *Stranger cut down Trees growing in the Copyhold Ground*, an Action of *Treſpaſs lies at the Common Law* againſt him. Co. Comp. Cop. 60. S. 51.

10. If

10. If a Copyholder makes a *Leaſe* by Copy for Years, or by Deed, *with Licence*, an Action of *Debt lies for the Rent reſerved* upon either Leaſe at the Common Law; But Ld. Coke much doubts whether he can *avow for the Rent* in the one or in the other, any more than Ceſtuy que Uſe, before the Statute 27 H. 8. cap. 10. could avow for the Rent reſerved by him upon a Leaſe for Years, and yet he could maintain an Action of Debt for ſuch a Rent, becauſe an Action of Debt for ſuch a Rent, is grounded upon the Contract. Co. Comp. Cop. 60. S. 51.

11. *Copyholders ſhall not implead nor be impleaded in the King's Courts by the King's Writs for their Tenements, but* ſhall make our Plaint *in the Lord's Court and make Proteſtation to follow it in the nature of one of the King's Writs as Formedon, Aſſiſe &c.* Nor can they have a Writ of *falſe Judgment*, but muſt ſue to the Lord by Petition in Nature of ſuch Writ, and therein aſſign Errors. Hawk. Co. Litt. 105. Litt. S. 76. Co. Litt. 60.

12. *An erroneous Judgment was given in a Copyhold Court, where the King was Lord*, and this was *in a Formedon in Remainder*, and it was moved, if the Party againſt whom it was given may ſue in the Exchequer Chamber by Bill, or Petition to the King, in the Nature of a Writ of a falſe Judgment, for the Reverſal of that Judgment, Tanfield ſeem'd that it is proper ſo to do, for by 13 Rich 2. if a falſe Judgment be given in a baſe Court, the Party grieved ought firſt to ſue to the Lord of the Manor by Petition, to reverſe this Judgment, and here the King being Lord of the Manor, it is very *proper to ſue here in the Exchequer Chamber by Petition*, for in regard that it concerneth the King's Manor, the *Suit ought not to be in the Chancery*, as in Caſe a Common Perſon were Lord, and for that very Cauſe it was diſmiſſed out of the Chancery, as Serjeant Harris ſaid. Lane 98. Hill. 8 Jac. in Scacc. Edward's Caſe.

13. *Copyhold Lands* are as the Demeſnes of the Manor, and are the Lord's Freeholds, and therefore *not impleadable but in the Lord's Court.* Cro. J. 559. pl. 5. Hill. 17 Jac. B. R. Pymmock v. Hilder. Gilb. Treat. of Ten. 292. cites S. C. For the Common Law does not take Notice of ſuch baſe Eſtates.——If an erroneous Judgment be given in the Lord's Court, it ought to be revers'd by Petition in Chancery, and decreed that it ſhould be. Lane 98. Hill 8 Jac. in the Exchequer, cited by Tanfield, as Pettiſhall's Caſe, in which himſelf was Counſel, in Lord Bromley's Time.

14. *Ejectment* lies not of a Copyhold Eſtate; it lies of a Leaſe made by a Copyholder, but not of a Demiſe made by the Lord of a Copyhold by Copy of Court Roll. Cro. E. 224. pl. 9. Paſch. 33. Eliz. B. R. Cole v. Wall and Burnell. Le. 328 pl. 463. S. C. and S. P. accordingly per tot. Cur. ——Supplement to Co. Comp. Comp. 86. S. 20. cites S. C. and S P. agreed. —— If a Copyholder without Licence makes a Leaſe for one Year, or with Licence makes a Licence makes a Leaſe for many Years and the Leſſee be ejected, he ſhall not ſue in the Lord's Court by Plaint, but ſhall have an Ejectment Firmæ at the Common Law, becauſe he has not a Cuſtomary Eſtate by Copy, but a Warrantable Eſtate by the Rules of the Common Law. Co. Comp. Cop. 60. S. 51.

15. An *Ejectment* will not lie for a 3d. Part of a Copyhold Tenement in Nature of *Dower*, for they ought to levy a Plaint in Nature of a Writ of Dower in the Manor Court, and the Homage to ſever and ſet out the ſame; But if the Cuſtom had been for the Widow to have the 3*d. Part*, *in Nature of Dower*, but in common with the Heir, 'twere then otherwiſe; per Pemberton Ch. J. at Chelmsford Aſſiſes. 2 Show. 184. pl. 188. Hill. 33 and 34 Car. 2. B. R. Chapman v. Sharp.

16. Copyholds are Parcel of the Demeſnes of the Manor, ſo that if they are triable in the Ld's. Court, thd *Ld. might be Judge and Party*; and therefore per Treby Ch. J. *Juriſdiction of the Lord's Court extends to Lands holden of the Manor only and not to Land, Parcel of the Manor.* 1 Salk. 186. pl. 4. 7 W. 3 C. B. Brittle v. Dade. Lord Ram. Rep. 44. Brittle v. Bade. S. C. and S. P by Treby Ch. J.

(N. d) Actions by the Lord againſt the Tenant.

Gilb. Treat. of Ten. 291. cites S. C. for the Lord has an Eſtate at Common Law in the Rent, and not the Cuſtomary Eſtate and it is due to him upon the ſame Grounds and Reaſons in Law, as the Rent of Freehold Lands is. —— * This is misprinted and ſhould be Hill. 6 R. 2.

1. AN *Avowery* may be made *for Rent* of a Copyholder *due to the Ld.* which is a Duty at the Common Law, and therefore an Avowry may well be for it; per tot. Cur. Cro. E. 524. pl. 51. * Mich. 38 and 39 Eliz. B. R. the 3d Reſolution in Caſe of Laughter v. Humphries, as 8 R. 2 Avowry 86 is.

2. Where the Lord *diſtrains* his Tenant and he makes *Reſcous*, and is diſſeiſed, yet per Keble, *Aſſiſe* lies well enough againſt the Tenant without any *Regreſs* made; per Mordant, without Poſſeſion of the Land the Aſſiſe cannot be maintained againſt the Tenant; Keble e contra, and a fortiori, *Writ of Cuſtoms and Services* lies againſt him, becauſe of Privity, and he remains Tenant in Fact to the Ld. notwithſtanding the *Diſſeiſin* of the Land; quod nota; Kelw. 20. pl. 4.

Gilb. Treat. of Ten. 291. cites S. C but ſays Quære; for Debt lies for a Fine and if it be a Duty then

3. If the Ld. lets the *Rents* of his Copyholder be arrear, and if the Copyholder ſurrenders his Land, and the Surrenderee is admitted, and ſo a *Fine* is due, *but before the Rent or Fine paid he ſells the Manor* to J. S. and his Heirs, he has no Remedy either in Law or Equity to recover his Rent or Fine, becauſe, he has depriv'd himſelf by his own Act. See Tit. Chancery (P.) pl. 1. and (Q.) pl. 3. Paſch. 10 Car. B. R. Hitcham v. Finch.

ſurely the paſſing away the Manor will not make it ceaſe to be ſuch; and Quære, why he ſhall not have Debt for the Rent due, and whether he has not a Freehold in them.

(O. d) What Acts of Parliament ſhall be conſtrued to extend to Copyholds.

4 Rep. 30. b. pl. 22. S. C. and S. P. held accordingly.

1. A Copyhold is within the *Statute of Merton*, that Feme ſhall recover Damages if her Baron dies ſeiſed; Per all the Juſtices. Mo. 411. pl. 559. Trin. 37 Eliz. in Caſe of Shaw v. Thompſon.

——S. P. by Yelverton J. Cro. C. 43.——Gilb. Treat. of Ten. 171. cites S. P.

S. P. by Yerverton J. Cro. C. 43.

2. The Stat. *Weſtm.* 2. *cap.* 4. *which gives to the particular Tenant a Quod ei Deforceat*, may by a benign Interpretation extend to Copyholds, becauſe it is beneficial to the Copyholder, and not prejudicial to the Lord; Agreed. 3. Rep. 9. Paſch. Eliz. in Scacc. and cites 10 E. 4. 2. b. accordingly.

Sav. 67 S.P. by Manwood Ch. Baron. —— S. P. by Yelverton J. Cro. C. 43.

3. The Stat. *Weſtm.* 2. *cap.* 3. which gives the Feme a *Cui in Vita, & Reſceipt*, may by a benign Interpretation extend to the Copyholds, becauſe they are beneficial to the Copyholder and not prejudicial to the Ld. Agreed. 3 Rep. 9. a. Paſch. 26 Eliz. in Scacc. and cites 10 E. 4. 2. b.

——Gilb. Treat. of Ten. 171, 172. cites S. C and ſays that the Stat. Weſtm. 2. cap. 3. in all it's Branches extends to Copyholds for the ſame Reaſons.

4. Copyhold

4. Copyhold Lands are not within the Stat. *Wegm.* 2. *cap.* 20. [18.] *Executions*; for if a Judgment be had in a Court of Record againſt a Copyholder for Debt and Damages, altho' the Plaintiff may have Execution by Fieri facias againſt his Goods, or a Capias againſt his Body, yet he *cannot have Execution of the Moiety of his Copyhold Lands by Elegit*, for that Copyhold Lands are not within the Statute; and *ſo* it is, *if a Stat. Merchant, or Staple be acknowledged by a Copyholder* for the Payment of Money at a Day certain, which is not paid, his Copyhold Lands are not extendable for the ſame; and the reaſon of theſe Caſes is, becauſe no Perſon can come to Copyholds but by Admittance of the Lord, and the Lord ſhould thereby loſe his Fine which is due upon Admittance, if the Party might have the Lands upon Extent delivered unto him. Supplement to Co. Comp. Cop. 86, 87. S. 21.

Agreed per tot. Cur. that this Act does not extend to Copyholds. 3 Rep. 9. Paſch. 16 Eliz. in Heydon's Caſe. —— S P. by 3 Juſtices, Arg Cro. C. 44. Mich. 2 Car. C. B. —— S. P. the Cuſtom.

by Manwood Ch. B. for if it ſhould extend to Copyholds, the Common Law would break Sav. 66, 67. pl. 138. in Scacc. in Heydon's Caſe. —— Gilb. Treat. of Ten. 173. S. P.

5. [But] *if the Tenant by the Curteſy, or Leſſee for Years, be of a Manor, and Copyholds were in his Hands by Forfeiture or other Determination, and he bindeth himſelf in a Statute, and afterwards he demiſeth the Copyhold again*, the Copyhold ſhall be liable to the Statute; But if a Copyholder bindeth himſelf in a Statute Merchant or Staple, his Copyhold Lands ſhall not be extended upon the ſaid Statute, becauſe therein he hath but an Eſtate at will. Supplement to Co. Comp. Cop. 87. S. 21. cites Paſch. 12 Eliz. in C. B. Mo. 94.

6. The Stat. of *Prerogativa Regis, cap.* 9, *and* 10. gives the Lands of Idiots natural to the King, he finding them convenient Maintenance out of the Profits thereof; But if the *Idiot hath Copyhold Lands* deſcended unto him, the King ſhall not have the Wardſhip of thoſe Lands therewith, out of the Profits thereof to maintain the Jdiot, becauſe the ſame would be prejudicial to the Ld. of the Manor, of whom the Lands are holden by Copy But; yet all Alienations made by an Idiot of his Copyhold Lands, after Office found, ſhall be avoided by the King. Supplement to Co. Comp. Cop. 86. S. 21 cites Stat. Prerogat' Reg' c. 9 and 10. 8 Rep. 170. in Towerſon's Caſe. 4 Rep. 126, 127, 128. in Beverley's Caſe.

Co. Comp. Cop. 61. S. 54. S. P. —— Gilb. Treat. of Ten. 173. S P.

7. The Statute of 5 *R.* 2. *of Departure out of the Realm* extends to Copyhold Lands. Supplement to Co. Comp. Cop. 88. S. 21.

8. The Statute of 16 *R.* 2. *Cap.* 5. which makes it a Forfeiture of Lands, Tenements, and Hereditaments, to the *Purchaſor of Excommunication, Bulls &c. in the Court of Rome* &c. extends not to Copyhold, becauſe it would be prejudicial to the Lord to have the King ſo far intereſted in his Copyhold without his Conſent. Co. Comp. Cop. 61. S. 53.

Gilb. Treat. of Ten. 173. S. P.

9. The Statute of 2 *H.* 5. *cap.* 7. *of Hereticks* extends not to Copyholds, for though the Lord of a Manor is yearly to receive a Benefit in having the Lands, after the Year and the Day, forfeited unto him, yet becauſe the King is Sharer in this Forfeiture, therefore Lands by Copy are not comprehended under the general Words; beſides, the Statute ſpeaks of the King's having Annum, Diem & Vaſtum of theſe Lands forfeited for Hereſy, as in Lands forfeited for Felony, whereby it appears that the Meaning of the Statute is, that ſuch Lands only ſhonld be forfeited in which the King by the ordinary Courſe of the Law ſhould have Annum, Diem & Vaſtum if the Tenant of them had committed Felony, but ſuch Lands are not Lands by Copy; for if a Copyholder commits Felony, his Copyhold is preſently forfeited to the Lord, therefore Copyholds are out of the general Purview of this Statute. Co. Comp. Cop. 61. S. 53.

10. By the Statute *of* 1 *R.* 3. *cap.* 4. it is expreſsly provided, that a Copyholder, having Copyhold Land to the yearly Value of 26 s. and 6 d. above all Charges, may be *impanelled upon a Jury* as well as he that has 20 s. per Ann. of Freehold Land. Co. Comp. Cop. 60. S. 52.

Supplement to Co. Comp 88. S. 21. cites S. C. ——Gilb. Treat. of Ten. 173, 174. S. P. it being no ways prejudicial to the Tenant or the Lord.

11. If I *levy a Fine* of my Copyhold Land, *and five Years paſs*, not only the Lord is bounden as to his Freehold and Inheritance, but alſo the Copyholder for his Poſſeſſion; for the Intent of the Statute of 4 *H.* 7. was to take away Controverſies, et litibus Finem imponere, and Contention may be as well for Copyhold as for Land at the Common Law; Per Popham Ch. J. Le. 99. pl. 126. Mich. 30 Eliz. Saliard v. Everat.

12. The Statute of 4 *H.* 7. *cap.* 24. of Fines extends to Copyholds, for if a *Copyholder* be *diſſeiſed*, and the *Diſſeiſor levies a Fine* with Proclamations, and 5 Years paſs without any Claim made, this is a Bar both to the Lord, and to the Copyholder. Co. Comp. Cop. 62. S. 55.

13. So if a *Copyholder makes a Feoffment in Fee, and the Feoffee levies a Fine* with Proclamation, and 5 Years paſs, the Lord is barred; *but if* the *Copyholder levies a Fine*, and 5 Years paſs, the Lord is not barred; for the Fine levied, (the Copyholder having no Frank Tenement) is utterly void. Co. Comp. Cop 62. S. 55.

14. *And* whereas it has been doubted, that this Statute ſhould not extend to Copyholds, but the Lord ſhould hereby receive grand prejudice, for he ſhould not only loſe the Fines upon Alienations or Deſcents, and the Benefits of Forfeiture, but ſhould withal be in Danger to be barred of his Frank-Tenement and Inheritance; to that my Lord Coke anſwers, if the Lord receive any ſuch prejudice, it is through his own Default for not making Claim, for *in regard of the Privity in Eſtate that is between him and the Copyholder, he may make Claim as well as the Copyholder himſelf*, Et Vigilantibus, non Dormientibus, Jura ſubveniunt. Co. Comp. Cop. 62. S. 55.

S. C. cited Arg. 4 Mod. 85. that the Words in the Statute are Manors, Lands, Tenements, and other Hereditaments.

15. Copyhold Lands are not within the Stat. of 11 *H.* 7. *cap.* 20. 2 Sid. 73. Paſch. 1658. B. R. Harrington v. Smith.

The Statute 27 *H.* 8. *cap.* 10. for executing Uſes to the Poſſeſſion, extends not to Copyholds, which is plain from common Experience; for when a Copyholder ſurrenders to the Uſe of another the Poſſeſſion is not executed to the Uſe; for the Surrenderee has nothing till Admittance; for it was not the Intent of the Statute to execute the Poſſeſſion to the Uſe of Copyhold Lands, for then a Tenant would be introduced without the Lord's Conſent. Gilb. Treat. of Ten. 170.

16. If a Man bargains and ſells Copyhold Lands, it ſeems nothing paſſes but a Uſe; for Copyholds *are out of the Statute of Uſes*, and therefore ſuch a Bargainor may afterwards ſurrender it to the Uſe of the Bargainee, and no Eſtate paſſing, it ſeems to me to be no Forfeiture. Gilb. Treat. of Ten. 239.

S. P. by 3 Juſtices, obiter. Cro. C 44. Mich. 2 Car. C. B. for it would tend to the Lord's Prejudice.

17. The Statute 27 *H.* 8. *cap.* 10. *of Uſes* touches not Copyholds, becauſe the Tranſmutation of Poſſeſſion by the ſole Operation of the Statute without Allowance of the Lord and of the Tenant and the Branch of the ſame Statute, which ſpeaks of *Jointures*, touches not Copyholds; becauſe Dowers of Copyholds are warranted by ſpecial Cuſtom only, and not by the Common Law, or by the General Cuſtom. Co. Comp. Cop. 61. S. 54.

18. The Branch of the Statute 27. *H.* 8. *cap.* 10. *as to Jointures* does not extend to Copyholds, ſo that if a Jointure be made to a Woman in

in Copyhold, that will be no Bar to her Dower; The Reaſon is, becauſe the Words of the Proviſo being general and introductive of a new Law, to bar Women of their Dower, where they were not barred by the Common Law, there is no Reaſon to extend them, ſince an Eſtate in Copyhold Lands is very diſadvantageous to the Woman, who muſt pay a Fine to be admitted, which ſhe may not be able to do, and thereby will commit a Forfeiture; beſides, a Woman is not dowable of common Right of Copyhold Lands, and ſo it ſeems to be out of the Regard of the Statute, and Lord Coke defines a Jointure to be a competent Livelihood of Freehold, ſo that it muſt be an Eſtate of Freehold. Gilb. Treat. of Ten. 170, 171.

19. The Statute of 31 *H.* 8. *cap.* 1. and 32 *H.* 8. *cap.* 32. by which Jointenants and Tenants in Common are compellable *to make Partition by a Writ de Partitione facienda*, as Copartners at the Common Law, touch not Copyholds becauſe this Alteration of the Tenure without the Lord's Conſent may ſound to the Prejudice of the Lord. Co. Comp. Cop. 61. S. 54.

S. P. by 3 Juſtices Obiter, Cro. C. 44. Mich. 2. Car. C. B. ——Gilb. Treat. of Ten. 172.

173. S. P. becauſe theſe Acts provide that it ſhall de done by Writ of Partition, and Copyhold Lands are not impleadable at Common Law.

20. Debt for the Fine of a Copyholder is not within the Statute of *Limitations*. 2 Keb. 536. pl. 56. Trin 21 Car. 2. B. R. per Cur. in Caſe of Hodſden v. Harris.

Gilb. Treat. of Ten. 165, 166 cites S. C.

21. The Teſtator was ſeiſed of ſeveral Rents iſſuing both out of Freehold and Copyhold Lands, and died ſeiſed, after his Death his Executor brought Debt for the Arrears as well of the Copyhold as of the Freehold Rents due in the Life-Time of his Teſtator, but the Court held, that the Statute 32 *H.* 8. did *not extend to Arrears of Copyhold Rents* but only to the Rents out of Free Land. Yelv. 135. Mich. 6. Jac. Appleton v. Baily.

Brownl. 102. S. C. but ſeems only a Tranſlation of Yelv.—— Gilb. Treat. of Ten. 174. cites the Supplement to Lord Cokes Treatiſe of Copyholds, where it is ſaid, that this Act extends not to Copyholds, and that to prove this a Caſe was cited there out of 2 Le. 109. Sands v. Hempſon, which ſee, with Lord Ch. B. Gilberts Remarks at [Q] pl. 4.

22. Copyholder in by Fee by Licence *made a Leaſe for* 21 *Years* by Indenture, and the *Leſſee covenanted for himſelf, his Executors and Aſſigns, to erect a Pale about ſuch a Cloſe, and lay* 40 *Load of Dung on Land every Year, and to repair the Buildings*; Afterwards the Leſſor *ſurrendred his Lands to* the Uſe of *the Plaintiff and his Heirs, who was admitted*, and *brought* an Action of *Covenant* againſt the Leſſee for not performing theſe Covenants; And the Queſtion was *whether a Copyholder that comes in by Surrender of the Leſſor, be ſuch an Aſſignee as might maintain this Action* by the Common Law, or by the Statute 32 *H.* 8. [cap. 34 of Conditions] as may maintain an Action of *Debt or Covenant* as an Aſſignee, where the Covenant is made by expreſs Words between the Leſſor and Leſſee, their Heirs and Aſſigns; ſed adjornatur. Cro. C. 24. pl. 17. Mich. 1 Car. C. B. Platt v. Plummer.

Supplement to Co. Comp. Cop. 87. S. 21. cites S C. and leaves it a Quære; for the Caſe was not reſolved. —— Keb. 357. pl. 46. Mich. 14 Car. 2 B. R. in Caſe of Baker v. Berisford, the Court held, that an *Aſſignee of a Copyholder is within the Statute to have an Action of Covenant*; Per Cur. the Surrenderee of a Copyhold Reverſion may bring Debt or Covenant againſt the Leſſee within the Equity of the 32 H. 8. cap. 3. for it is a remedial Law, and no Prejudice can ariſe to the Lord, and whether he is in the Per or in the Poſt is not material, for a Bargainee may maintain Covenant within this Statute, and yet no Doubt but he is in the Poſt, and Yelv. 222. was a haſty Reſolution, and Hob. 178. only an extrajudicial Opinion; Judgment for the Plaintiff; Note, the Words of the Act are, No Perſon being a Grantee or Aſſignee of any Reverſion, 1 Salk. 185. pl. 2. Mich 3 W. & M. in B. R. Glover v. Cope.——Grantee of Reverſions of Copyholds ſhall not take Advantage of a Condition broken, by the 32 H. 8. nor by the Common Law (of Covenants they may, Keb. 350. Cro. C. 24, 25. tamen Quære upon Yelv. 135.) For then by Entry he might come in

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to be Tenant to the Lord without Admittanee, and tho' he in the Reverſion may enter by the Common Law, yet he was Tenant before; The Act gives Remedy to Aſſignees, which he is not properly who comes in by Surrender; When a Copyholder enters for a Condition broken, he is in Statu quo prius, and therefore ſhall pay no Fine; and if the Grantee of the Reverſion might enter by Force of the Statute, he would be in the ſame Place as his Grantor, and ſo would be in as Tenant, and yet pay no Fine. Gilb Treat. of Ten. 168, 169.

Cro. J. 305. pl 7 Beal v. Braſier S. C. Williams & Yelverton, (abſente Fleming) held that the Reverſioner by way of Surrender &c. could not take Advantage of the Condition, neither by the Common Law, nor by the Statute and Judgment accordingly.——Brownl. 149. S. C. ſeems only a Tranſlation of Yelv.——This Caſe is deny'd, and called a haſty Reſolution. 1 Salk. 185. pl. 2. Mich. 3. W. & M. in B. R. in Caſe of Glover v. Cope. — S. C. cited Supplement to Co. Comp. Cop. 87. S. 21. accordingly ——Hob. 178. at the end of pl. 203 Hobart Ch J. was of Opinion the Copyholds are not within the Statute of Conditions.——S. P. by 3 Juſtices Obiter Cro. C. 44 Mich. 2 Car. C. B.

23. A Copyholder in Fee *by Licence made a Leaſe for Years*, rendering Rent, *on Condition to reenter*; and the Copyholder ſurrendered to J. S. in Fee, who demanded the Rent on the Land, which not being paid he entred on the Leſſee; Held, that the Entry of J. S. is not lawful; for Copyhold Land is not within the Statute 32 *H.* 8. *cap.* 34. *of Conditions*, nor J. S. ſuch an Aſſignee as the Statute intends; for he is in only by the Cuſtom, which does not extend to ſuch collateral Things, and he is not privy to the Leaſe, but may plead his Eſtate immediately under the Lord. Yelv. 222. Trin. 10 Jac. B. R. Braſier v. Beale.

And per Holt Ch. J. if Copyholders were enabled by Cuſtom to demiſe, it is is reaſonable to conclude, that they may Covenant and make Conditions of Re-entry and other Proviſions common in Leaſes. Skin. 298.—— Adjudged that Covenant lies. Ibid. 307. Glover v. Cope. ——3 Lev. 326. S. C. adjudg'd.—4 Rep. 80. S. C. adjudged.——1 Salk. 185. pl. 2. S. C. and per Cur. the Surrenderee of a Copyhold Reverſion may bring Debt or Covenant againſt the Leſſee within the Equity of the 32 H. 8. cap 3. for it is a remedial Law, and no Prejudice can ariſe to the Lord, and whether he is in in the Per or in the Poſt is not material, for a Bargainee may maintain Covenant within this Statute, and yet no doubt but he is in Poſt, and Yelv. 222. was a haſty Reſolution, and Hob. 178 an extrajudicial Opinion; Judgment for the Plaintiff. Note, the Words of he Act are (No Perſon being a Grantee or Aſſignee of any Perſon) ——Show. 284. S. C. adjudged.

24. A Copyholder is within the Equity of the Statute of 32 *H.* 8. *cap.* 34. *whereby Grantees of Reverſions have like Advantage againſt Leſſees by Entry for Non-Payment of Rent, as Grantors or Leſſors themſelves might have*; tho' Copyholders are not within this Statute as *to Entry for Condition, yet* an Action of *Covenant lies*; Arg. Skin. 297. Mich. 3. W. & M. in B. R. Glover v. Cope.

4 Rep. 23. pl. 4. S. C. Paſch. 35 Eliz. B R. and that neither ſhe no her Heir ſhall be put to ſue her Cui in Vita.—S. P. by 3 Juſtices Obiter. Cro C. 44. Mich 2 Car. C. B ——— Gilb. Treat. of Ten. 166. cites S. C. For the Words are *that no Fine, Feoffment, or any other Act or Acts &c. of the Wife's Inheritance or Freehold*, which Words plainly *mean nothing but a Common Law Eſtate, and the Common Law way of Conveyancing*, and if the Equity of the Act ſhould be conſtrued to extend to Copyholds by the Entry of the Party, there would be a Tenant without the Aſſent or Admittance of the Lord, neither doth the other Part of the Act concerning Leaſes to be made by the Tenant in Tail, or Husbands of Lands in Right of the Wives, extend to Copyholds, for it only extends to thoſe Lands that are grantable by Deed, and yet it was adjudged, that a Grant by Deed of Copyhold Lands by a Dean and Chapter ſhould not be avoided by the Succeſſor by 13 Eliz. cap. 10. in the Dean and Chapter of Worceſter's Caſe, 6 Rep. 37. and ſo ſays, the Queſtion will be, why Copyhold Lands ſhould not be within the 32 H 8. as well as the 13 Eliz. cap. 10. if the 32 H. 8. doth not extend to Copyhold Land, then a Biſhop ſolely cannot make a Grant by Copy to bind his Succeſſor; Lord Coke ſays, that a Grant by Copy in Fee, or in Tail, for Life or Years, is a ſufficient demiſing within the Act 32 H. 8. All thoſe Books may be thus reconciled though in Truth they are not contrary to one another. When a Man is ſeiſed in Fee of Lands in right of his Church or Wife, or is Tenant in Tail in his own Right, and ſome of his Lands have been granted by Copy for the Space &c. this is a ſufficient demiſing within the Act, to Warrant his demiſing of them ſo as to bind the Heir

25. *Baron ſeiſed of Copyhold of Inheritance in Right of his Feme ſurrendered it without his Feme to the Uſe of a Stranger, who was admitted, and ſurrendred to the Uſe of another*; All the Juſtices held that this is not within the Letter, nor the Equity of the Statute 32 *H.* 8. *which gives Entry to the Feme* and her Heirs againſt the Diſcontinuance of the Baron. Mo. 596. pl. 813. Bullock v. Dibley.

Heir or Succeſſor ; But where a Man is himſelf Tenant in Tail of Copyhold Lands, or is ſeiſed in Right of his Chruch or Wife, there he can make no Leaſe to bind by Force of the 32 H. 8. becauſe they are not to be made by Surrender by Force of that Act, but by Deed indented ; and tho' by Licence of the Lord a Leaſe of Copyhold be demiſed by Deed indented, yet the Eſtate is not Originally ſo grantable, to which only the Statute extends, and therefore tho' Copyhold Lands have been granted if they come into the Lord's Hands, this Grant by Copy may be a ſufficient demiſing within the Act, to warrant his letting them again by Deed according to the Act, yet it ſeems he cannot grant them again by Copy, for the Act requires that Leaſes be made by Indenture ; and it is obſervable in the **Dean and Chapter of Worceſter's Caſe**, tho' the Lands were Copyholds, yet when they came into their Hands they were demiſed by Deed indented, which Demiſe was warranted by the Act upon the former Grant by Copy; Now then, if the 32 H. 8. doth not enable Grants by Copy, it is a great Queſtion to me, whether the 13 Eliz. doth reſtrain them, for all Leaſes made according to the Exception of the reſtraining Act muſt purſue the Qualifications of the enabling Act, and conſequently muſt be made by Deed, and then if Grants by Copy be left as they were at Common Law, Eccleſiaſtical Perſons may grant Lands by Copy in Fee with the conſent of theſe Perſons whoſe conſent is required to bind their Succeſſors, I mean, if they have Copyhold Lands in Fee, they may grant them by Surrender to another, not that if they are Lords, and they eſcheat, they may grant them in Fee, for upon the Eſcheat they free themſelves in their Hands, and ſo within the Act.——Gilb. Treat. of Ten. 172. cites Cro C. 43. and ſays, that it was ſaid by Yelverton Arguendo, that the 32 H. 8. cap. 8. which gives an Entry inſtead of the Cui in Vita, extends to Copyhold Lands, for the Act was made to redreſs a Wrong, and it is no Prejudice to the Lord or Tenant, that the Wife ſhall enter, and the general Words of the Act that give a Cui in Vita, have been allowed to extend to Copyholds ; the Words of the Statute 32 H. 8. are, being the Inheritance or Freehold of his Wife ; So if this Act does in this Branch extend to Copyhold Lands, as it ſeems to me it does, then one and the ſame Act of Parliament, in one Part of it, will extend by general words to Copyhold, and the other not, for the firſt Part of the Act of Leaſes to be made by Tenant in Tail extends not to Copyhold Lands.

26. Copyholds are within the *Statute of Limitations*, per tot. Cur. Mo. 411. pl. 559. Trin. 37. Eliz. in Caſe of Shaw v. Thompſon. Gilb. Treat. of Ten. 165. cites S C. For that is an Act made for the Preſervation of the Publick Quiet, and no way tending to the Prejudice of the Lord or Tenant. And Actions concerning Copyholds are as fully and plainly within the Words of the Act of Parliament as any other Actions are, and ſo there is no reaſon to exclude them from the Meaning.

27. The Statute of 32 *H.* 8. *cap.* 9. *of Buying pretenſed Titles* extends to Copyhold Lands. Supplement to Co. Comp. Cop. 88. S. 21.

28. If one that has a pretended Right or Title to Copyhold Land bargains and ſells it to another, this is within the Statute 32 *H.* 8. *cap.* 9. *of Maintenance &c.* the Words whereof are, that if any bargain buy, or ſell &c. any Right or Title in or to any Lands or Tenements &c. which Words (any Right or Title) extend to all Manner of Rights or Titles, and by Conſequence, to Copyhold Lands ; Per Wray Ch. J. 4 Rep. 26. a. Paſch. 31 Eliz. B. R. in Caſe of Kite v. Quinton. S. P. ſaid to have been agreed 2 Brownl. 134. ——Co. Litt. 369. b. S. P. cites S. C. ——Gilb. Treat. of Ten. 172. S. P. and the Act being to ſuppreſs wrong, it is within the Equity of it, neither Lord nor Tenant being prejudic'd thereby.

29. Action of *Debt doth not lie for Arrears of Copyhold Rent*, but only Rents of Freeholds, and the Statute 32 *H.* 8. extends not to them. Yelv. 135. Mich. 6. Jac. B. R. Appleton v. Doily. Brownl. 102. Appleton v. Baily S. C. & S. P.

30. By the Statute of 1 *E.* 6. *cap.* 14. it is expreſsly provided, that *upon the Diſſolution of Abbies and Monaſteries Copyholds ſhould continue* as they did before the Statute *and ſhould fall into the King's Hands.* Co. Comp. Cop. 60 S. 52.

31. By the Statute 1 *Mar. cap.* 12. it is expreſsly provided, *that if any Copyholder, being Yeoman, Artificer, Husbandman, or Labourer, and being of the Age of* 18 or more, *under the Age of* 60, *not ſick, impotent, lame, maimed, nor having any juſt or reaſonable Cauſe of Excuſe, upon Requeſt made by any Man in Authoriry, refuſes to Aid Juſtices in ſuppreſſing of Riotous Perſons* that then immediately he ſhall forfeit his Copyhold to the Lord of whom it is held, during the Copyholder's natural Life. Co. Comp. Cop. 60. S. 52.

Supplement to Co Comp. Cop. 88 S. 21. S. P. ——Gilb Treat. of Ten. 173. S. P.

32. By the Statute of 5 *Eliz. cap.* 14. it is expreſsly provided, that the *forging of a Court Roll*, to the Intent to defraud a Copyholder, ſhall be as well puniſhable as forging any other Charter, Deed, or Writing Sealed, whereby to defeat a Copyholder or Freeholder. Co. Comp. Cop. 60. S. 52.

Supplement to Co. Comp. Cop. 87 S. 21. cites S.C. ——Gilb. Treat. of Ten. 176. ſays this is a Reaſonable Opinion; For Power is given by that Act to make Sale by her Letters Patents, which ſhould be a very great Prejudice to the Lord.

33. The Statute of 13 *Eliz. cap.* 4. *of Auditors and Receivers* of the Queen doth not extend to Copyholds, and it ſhould be a great Prejudice to the Lords of ſuch Copyholds, that the Queen ſhould have the Land; Per Walmſly Le. 98. pl. 126. Mich. 30 Eliz. in Caſe of Saliard v. Everet.

See pl 25. Bullock v. Dibley and the Notes there as to comparing this Statute of 13 Eliz 10. with the Statute of 32 H. 8. cap. 38.

34. The *Dean and Chapter* of W. the 24 Eliz. *demiſed to G. a Copyholder for Life the ſame Copyhold Lands for the Lives of A. B. and C. and the Survivor of them.* The Dean died. The Succeſſor Dean and Chapter entred. Reſolv'd that the Act of 13 *Eliz. cap.* 10. does not avoid this Leaſe if the accuſtom'd Yearly Rent be reſerved, or more. 6 Rep. 37. b. 38. a. Trin. 3 Jac. B. R. The Dean and Chapter of Worceſter's Caſe.

Gilb. Treat. of Ten. 169. S. P. and that Copyhold Lands are within the Statutes of Bankrupts; Becauſe the Statute 13 Eliz. expreſsly mentions them, and though the other Statutes do not, yet they being made for further Remedy in the Matter aforeſaid, were not to be expounded by the former, eſpecially ſince that has taken Care that no Prejudice ſhall happen to the Lord.

35. By the Statute 13 *Eliz. cap.* 7. it is expreſsly provided, that the Copyhold Land, as well as the Freehold *Land, of a Bankrupt*, ſhall be ſold for the ſatisfying of the Creditor. Co. Comp. Cop. 61. S. 52.

Cro. C. 548. pl. 2 S C. & S. P. agreed by the Juſtices. ——Jo. 437. pl. 3. S. C. adjudg'd. ——Mar. 36 pl. 67 S. P. agreed by all in S. C. pl. 67.

36. It was reſolved by all the Juſtices, that Copyhold is within the Statutes of 13 *Eliz.* 1 *& Jac.* [concerning Bankrupts] becauſe it is no Prejudice to the Lord, for that there ought to be a Compoſition with the Lord, and the Vendee of the Lands, and altho' the Sale is and ought to be by Indenture, yet the Vendee ought to be admitted by the Lord. 2dly, The Words of the Statute of 13 Eliz. expreſsly are, That the Commiſſioners ſhall diſpoſe of Lands as well Copy as Free, and the ſaid Statutes ſhall be conſtrued moſt beneficially for Creditors, id eſt Suum cuique tribuere. Supplement to Co. Comp. Cop. 88. S. 21. cites Trin. 15 Jac. [Car.] in B. R. Criſp v. Prat. Trin. 15 Car. and ſo by all the Books it ſeems miſprinted in the Supplement (Jac.) for [Car.] ——S. C. cited by the Chief Baron as objected that Copyhold Lands are within the Statutes of 1 Jac. and 21. Jac. by reaſon of the words Lands, Tenements, and Hereditaments, and ſaid, that thoſe Words do not make the Reaſon, but the Reaſon is, becauſe Copyhold Eſtates are expreſsly mentioned, but the Reaſon was, becauſe Copyholds are expreſsly mentioned in the Statute 13 *Eliz. concerning Bankrupts*, and the Statute 21 Jac. being ſubſequent and explanatory, and a very beneficial Law, therefore Copyholds have been adjudged to be within thoſe ſubſequent Laws; Beſides, the Lord of the Manor, in the Caſe of a Bankrupt Copyholder, can be at no Prejudice, becauſe the Aſſignee of the Commiſſioners is to be admitted, and to pay his Fine to him, and in Caſe of Forfeiture by Attainder the Lord ſhall have the actual Poſſeſſion of the Copyhold, by way of Eſcheat after the Death of the Copyholder, and this Pro defectu Hæredis, becauſe his Blood is corrupted by the Attainder; but it may be a Queſtion, who ſhall have the Profits during his Life. Hard. 435, 436.——Upon the Statute of 13 Eliz. cap. 7. which impowers the Commiſſioners of Bankrupts to ſell the Lands &c. it has been held, that they could not ſell Copyholds if that Law had not given them Power by expreſs Words, viz. to ſell as well Copy as Free Land, and ſo are ſeveral Acts of Parliament made to give *Forfeitures of Lands, Tenements, or other Hereditaments* &c. which Words do not extend to Copyholds but only to Inheritances at Common Law. And the Reaſon is becauſe Copyhold Lands at the Time of making 13 *Eliz. cap.* 7. and other Acts, and long after, were in no eſteem of the Law; For the Tenants of thoſe lands held them

them in Villeinage, or at beſt were but Tenants at Will, and ſo not within the Proviſion or Care of Acts of Parliament. And even at this Day their Eſtates are held only at the Will of the Lord according to Cuſtom of the Manor; And in many reſpects this Tenant hath a dependance upon the Lord for he can neither alien nor leaſe his Copyhold without Licence; and therefore when either is done, 'tis as well the Act of the Lord as of the Tenant. Arg. 4 Mod. 85, 86. Hill. 3 & 4 W. & M. in B. R. in Caſe of Glover v. Cope.

37. By the Sratute 14 *Eliz. cap.* 6. it is expreſsly provided, that if any of the Queen's Subjects *go beyond the Seas without Licence*, that then the Queen ſhall not only take the ordinary Profits of the Fugitives Copyhold Land as they ariſe, but ſhall let, ſet, and make Grants by Copy, and uſual Woodſales, and other things, to all Intents and Purpoſes as a Tenant pro Termino durante Vita may do. Co. Comp. Cop. 61. S. 52.

38. The Statute of 14 *Eliz. of Fugitives* extends to Copyhold Lands. Supplement to Co. Comp. 88. S. 21.

39. Copyholds are not liable to the 20 *l. per Month upon the* 29. [28.] *Eliz. for Recuſancy*. Ow. 37. Paſch. 13 Eliz. Anon.

40. A *Recuſant* being Convict for not paying 20 l. a Month forfeited by the Statute 29 *Eliz. cap.* 5. *and other Statutes of Recuſancy*, a Commiſſion iſſued out of the Exchequer to inquire and ſeiſe all his *Goods, Lands, Tenements, and Hereditaments, liable to* ſuch a *Seiſure*; Upon the Return of the Commiſſion it appeared, that ſome of the Lands retu. ned were Copyhold Lands; It was a Queſtion, if they were within the Statute? It was the Opinion of the Court, that they were within the Equity of the Statute; for the Words of the Statute are, Lands, Tenements, and Hereditaments, which are forcible Words, and the Intention of the Statute was, that the Queen ſhould have all the Goods, and the Recuſant by the Words of the Statute was only to have the 3d Part of his Lands, which is all that the Law gives him, and if Copyhold Lands ſhould not be within the Statute, if a Recuſant who had great Poſſeſſions only of Copyhold Lands ſhould go unpuniſhed, it was contrary to the Meaning of the Makers of the Act. Supplement to Co. Comp. Cop. 88. S. 21. cites Le. 97. Trin. [Mich] 30 Eliz. in Scacc. Saliard v. Everard.

Ow. 37. Paſch. 13 Eliz. S. C. adjudged after great Debate, that Copyhold Lands are not within the Statute, by reaſon of the Prejudice that may thereby come to the Lord who has committed no Offence, and therefore ſhall not loſe his Cuſtoms and Services. —— Gilb. Treat. of Ten. 175. cites S C. and ſays, it came to be a Queſtion, whether the Statute 29 Eliz. cap 5. extended to Copyholds? and two ſeemed of Opinion it did, and one took this Difference, that when a Statute is made to transfer an Eſtate by the Name of Lands, Tenements, and Hereditaments, Copyholds are not within ſuch Statute.

41. Copyholders are not within the Statute of 31 *Eliz. cap.* 7. *of Cottages*. Bulſt. 50. Mich. 8. Jac. Brocke v. Beare.

2 Inſt. 737. S. P. —— Gilb. Treat. of Ten. 176. S. P. and cites ſame Caſes.

42. By the Statute 35 *Eliz. cap.* 2. it is expreſsly provided, that if any Perſon or Perſons, being convicted of *Recuſancy*, repair not home to their uſual Place of abode, not removing from thence above 5 Miles Diſtance, that then any Perſon or Perſons thus offending, ſhall not only forfeit their Freehold Land to the Queen, but withal their Copyhold to the Lord or Lords of whom it is holden. Co. Comp. Cop. 61. S. 52.

Gilb. Treat. of Ten. 173. S. P.

43. A Copyholder is not *within the* 12 *Car.* 2. [*cap.* 24.] *to diſpoſe the Cuſtody of his Children*, but the Cuſtody ſhall be to the Lord or others, according the Cuſtom of the Manor, as to the Copyhold Lands, for the Prejudice which may be to the Lord, and for the Meanneſs of the Eſtate. 3. Lev. 395. Paſch. 6 W. & M. in C. B. Clench v. Cudmore.

2 Lutw. 1181. 1190. S. C. & S. P. reſolved. —— Lord Raym Rep. 132, 133. S. C. cited as adjudged for the Lord, for the Statute extends only to Lands and Tenements at the Common Law.

44. Iſaac

44. Iſaac Pennington was attainted of High Treaſon, by the Act 12 *Car. 2. of Regicides*, and was at that time ſeiſed of a Copyhold, held of the Manor of W. of which the Defendant was Lord. By the ſaid Statute the *Forfeiture is given to the King of all Lands, Tenements, and Hereditaments, &c. which the Perſon attainted had on the 25th Day of March, or at any Time ſince* 1646, and that they ſhall be in the actual Poſſeſſion of the King, without Office or Inquiſition, proviſo, that no Grants or Conveyances, or Grants and Surrenders by Copy, &c. had or made before 29 Sept. 1659, by any Perſon attainted &c. ſhall be impeached &c. the Queſtion was, Whether by the general Words of this Act of Parliament, the Copyhold Lands are included, and ſo forfeited to the King, and whether the Proviſo, wherein Copyhold Lands are mentioned, adds any Force to the general Words; and per Hale Ch. B. if this Eſtate ſhould be forfeited, the Copyhold will be deſtroy'd, and paſs by Letters Patents, and not by Surrender, and it would be a hard Conſtruction to expound an Act of Parliament ſo as to deſtroy the Intereſt of an innocent Perſon. Hard. 432. 435. Hill. 18 & 19 Car. 2. in Scacc. the Duke of York v. Marſham.

45. A Copyholder committed Treaſon in the Murder of King Charles, and afterwards Anno 1655. he ſurrendered his Copyhold into the Hands of the Lord of the Manor, for the Uſe of his Children, and died. The Children were admitted. Anno 1659. the Manor was ſold to the Plantff, and Anno 12 *Car.* 2. the *Regicides* were attainted by Act of Parliament, by which it was *enacted, that all their Eſtates Real, and Perſonal, and other Things of that Nature, whatſoever they ſhall be; ſhall be forfeited to the King*; Charlton J. was of Opinion, that this Copyhold was given to the King by theſe general Words (*Other Things of that Nature whatſoever*) but all the reſt of the Court were of Opinion, that Copyholds were never included in a Statute where the Lord might have any Prejudice, unleſs expreſsly named, and for the Proviſo, it might be ſatisfied by the Copyholds which the Traitors might hold in the King's Manors, or where they had a Manor held of the King, and had made voluntary Grants of Copyholds and Surrenders made ſubſequent; But it was order'd to attend the King's Attorney General, to know if he deſired to be heard to the Point, et adjornatur. 2 Vent. 38. Paſch. 35. Car. 2. C. B. Ld. Cornwallis's Caſe.

46. Statutes that are *beneficial* to the Copyholder and not prejudicial to the Lord, may by a benign Interpretation be extended to Copyhold; As Statute W. 2. cap. 3. which gives *Cui in Vita* and *Reſceipt* and cap. 4. which gives to the particular Tenant *Quod ei Deforceat.* 3. Rep. 9. a. Paſch. 26 Eliz. in the Exchequer. Heydons Caſe.

47. When an Act of Parliament *alters the Service, Tenure*, or *Intereſt of the Land, or other Thing in Prejudice of the Lord*, or of *the Cuſtom of the Manor*, or of *the Tenant*, there the general Words of an Act of Parliament ſhall not extend to Copyholds, but when an act is generally made for the Publick Good, and no Prejudice may accrue by reaſon of the Alteration of any Intereſt, Service, Tenure, or Cuſtom of the Manor, there oftentimes Copyhold, and cuſtomary Eſtates, are within the general Purview of ſuch Acts. 3. Rep. 8. a. Paſch. 29 Eliz. in the Exchequer. Heydon's Caſe.

Sav. 66, 67. pl. 138. S. C. in Sacc. and S. P. by Manwood Ch. B. —— Mo 128. pl. 276. Paſch. 35 Eliz. in Scacc. S. C. & S. P. per Manwood. —— Co. Comp. Cop. 61. S. 53. cites S. C —— Supplement to Co Comp. Cop. 77. S, 12. cites S. C. —— Ibid. 86. S. 21. cites S. C. & S. P. —— Godb. 369. pl. 458 Mich. 2 Car. it was ſaid per Cur. that ſuch Difference was taken by Popham Ch. J. 42 Eliz. B. R in Caſe of Baſpool v. Long, that a Cuſtom which conduces to maintain Copyholds extends to them, but a Statute or Cuſtom which depraves or deſtroys them does not. —— [This Point does not appear in any of the Reports of the Caſe of Baſpool v. Long.] —— Cro. C. 42. &c pl. 4 Mich. 2 Car. C. B. the S. P. in Caſe of Rowden v. Malſter. —— S. P. by 3 Juſtices. 2 Vent. 39 Paſch. 35 Car. 2. C. B. —— Gilb. Treat. of Ten. 152. S P.

48. Note,

48. Note, that in no Caſe, *where the King claims a Share in the Forfeiture* of the Lands, (as in the Statute H. 5. which ſpeaks of Lands forfeited for Hereſy, viz. that the King ſhall have Annum, Diem et Vaſtum, as he hath for Lands forfeited for Felony) *Copyhold Lands are not within the general Words of ſuch Statute*, for that in ſuch Caſe, if the Copyholder committeth Felony, the Copyhold is preſently forfeited to the Lord of the Manor, and therefore out of the Words of that Statute, and other the like Statutes. Supplement to Co. Comp. Cop. 87. S. 21.

49. Copyholders are *comprehended* under Statutes, *either by expreſs Limitation in preciſe Words, or by a ſecret Implication upon general Words.* Co. Comp. Cop. 60. S. 52.

50. There is a Difference between *Penal Statutes, which gave a Forfeiture generally, or to particular Perſons*, as the King &c. Copyholders are within the firſt, becauſe in ſuch Caſe the Lord may enter, or the Land may eſcheat to him, but they are not within the laſt. 2. Sid. 43. Arg. Hill. 1657. in Caſe of Harrington v. Smith.

51. The King cannot ſeiſe two Parts of Copyhold Lands of a *Recuſant convict*. Hard. 33. Hill. 18 & 19. Car. 2. in Scacc. Duke of York & al' v. Sir John Marſham Baronet.

52. Thoſe Statutes which concern or *affect the State of the Land* have been conſtrued not to extend to Copyholds, as the Statute which gave *Elegits*. Acton Burnel did not. Arg. Show. 287. Mich. 3 W. & M.

It is true, Statutes which regard *criminal Matters*, have been adjudged to reach it. Ibid. cites Le. 97. —— Ow. 37. Anon.

53. Copyholds are held to be within the Statute *of Sewers* to be Taxed but not to be Sold. Arg. Skin. 297. Mich. 3 W. & M. in B. R. in Caſe of Glover v. Cope. cites Callis Reading on the Statute of Sewers.

54. *Particular Statutes* by which the *Lord may have any Prejudice* as to Fines or Amerciaments, don't bind Copyhold Tenements, as the Statute H. 8. concerning *Bankrupts* did not extend to Copyholds, and therefore a ſubſequent Law was to include them, neither did the Statute of *Recuſancy* extend to ſuch Eſtates, and the Reaſon given is, becauſe the Lord may thereby receive an Injury by the Loſs of the Cuſtoms and Services, but *general Laws* made *for the Publick Good, and where the Lords of Manors can have no Prejudice*, are binding, and ſhall extend to Copyhold Lands, tho' not named in ſuch Statutes; Arg. 4 Mod. 84. Hill. 3 & 4. W. 3. B. R. in Caſe of Glover v. Cope.

3 Lev. 127. S. C. —— and the *only Reaſon why* Copyholds have been adjudged not to be within the Purview of other Statutes which contain *general Words*, is, becauſe of the reſpect to the *Lord's Prejudice*. Carth. 205. in Caſe of Glover v. Cope. —— 1 Salk. 185. pl. 2. S. C. but S. P. does not appear.

(P. d) Agreements between Lord and Tenants.

1. A *Cuſtom of Deſcent* in a Manor, and many other Things, were in Controverſy between the Lord and Tenants, and between the Tenants themſelves, and in the 10 Eliz. a *general Agreement* made *by Deed* indented, and a *Bill in Chancery eſtabliſhing the ſame*, but no Record to be found, but the Deed inrolled, though all the Tenants of the ſaid Manor ſhall be ſtopped in the Chancery to ſpeak againſt this, for it is for the Repoſe of the Realm notwithſtanding Pretence was made that Agreement cannot alter a Cuſtom in Law, that *ſome* were *Infants, ſome Feme Coverts* at the Time, and that the *Lord was but Tenant in Tail*, of which Opinion was Mr. Cook Attorney General, and Juſtice Gawdy. Cary's Rep. 29, 30. cites 10 June 1602. 44. Eliz.

2. In the Caſe of *Tenant-Right* between M. and ſome of his Tenants on the Borders, the Lord Chancellor pronounced, that neither in Tenant-Right nor in other Copyholds would he make any *Order for all his Tenants in general*, but for ſpecial Men in ſpecial Caſes, nor for any longer Time then the preſent, except it were by Agreement between the Lord and Tenants, which then he would decree if it appeared *reaſonable*. Cary's Rep. 38. cites 8. June 1 Jac. Muſgrave's Caſe.

S. P. and for *reducing Fines to a Certainty.* Fin. R. 154. Mich. 26 Car. 2. Meadows v. Paterick.

3. An Agreement between the Lord and Tenants *for ſettling Hericts*, and *ſtinting Common*, was decreed to be affirmed. The Lord ſells the Manor, and the *Purchaſor*, though he came not in Privity, brought a Bill to *revive the Decree*, and had the ſame confirmed, though neither the *Lord nor Tenants had greater Eſtate than for Life*; Quære. Vern. 427. pl. 402. Hill. 1686. Dunn v. Allen.

(Q. d) Caſes of Agreements, and Covenants about Copyholds between Tenants and others.

1. A. Covenants *to aſſure* Copyhold Land to J. S. In an Action by J. S. he needs not ſhew a Court to be holden, for A. ought to *procure a Court* to be holden. Cro. J. 102. pl 35. Mich. 3 Jac. B. R. Fletcher v. Pynſet.

A Man covenanted for himſelf and his Heirs, to ſurrender a Copyhold Eſtate to certain Uſes agreed upon, and died before it was done. A Bill was brought for a ſpecifick Execution of this Covenant, and the ſame was decreed accordingly. 9 Mod. 106. Mich. 11 Geo. in Canc. Neeve v. Keck.

2. A. ſeiſed of Copyhold and Freehold Lands, ſettled the Freehold Lands on himſelf for Life, Remainder of Part *to his Wife for Life, for Part of her Jointure*, *Remainder to his Heirs Male on the Body of his Wife* Remainder *to his Heirs Male* of his Body, Remainder *to B. his Brother in Tail Male*, Remainder to his own *right Heirs*, and *Covenants* with the ſame Truſtees, *to ſettle the Copyholds to the ſame Uſes*. A. going to make a Surrender fell ſick, but made a Letter of Attorney to do it, but died before it was done without Iſſue Male. The Freehold Lands remained to B. but the Court would not compel the Heirs general of A. to *execute the Covenant* to ſurrender. Ch. Caſes 243. Mich. 26 & 27. Car. 2. Bellingham v. Lowther and Wentworth.

3. *Two Copyholders* upon a *Treaty of Marriage* between them *ſurrendered* their reſpective Copyholds *to the Uſe of them and the Survivor* of them, and *before Marriage the Man dies*. The Woman entred, and *enjoyed for* 30 *Years*; it was inſiſted, that this was a Truſt for the Man and his Heirs till the Marriage, and Lord Jeffries decreed a Re-ſurrender, and an Account of the Profits from the Death of the Man. Vern. 432. pl. 408. Hill. 1686. Hamond v. Hicks.

Though in Strictneſs the Rent would not *paſs by way of Surrender*, Ibid.

4. *Rent granted out of a Copyhold* and which had been frequently alienated by Surrender and Admittance for a valuable Conſideration was made good in Equity. 2 Vern. R. 16. pl. 10. Hill. 1686. Spindlar v. Wilford. yet the Surrenders and Admittances are Evidences of the Agreement for the Sale

5. On Marriage a Freehold Eſtate was ſettled on Husband and Wife for their Lives, Remainder to the firſt Son in Tail, *Remainder to Truſtees for* 500 *Years*, *to raiſe Daughter's Portions*, Remainder over, and there

there was a Covenant from Baron to ſettle his *Copyhold Eſtate to the ſame or like Uſes*, and ſubject to the ſame Truſts on Proviſoes &c. A *Surrender is made, but no Term is limited.* There was no Iſſue Male, and the Freehold was ſufficient to raiſe the Daughter's Portions. Bill diſmiſſed at the Rolls, but Lord Somers, on Appeal, decreed the Copyhold Eſtate *to ſtand charged*, and liable to raiſe Daughter's Portions. 2 Vern. R. 321. pl. 308. Mich. 1694. Shouldam v. Shouldam.

6. A. a *Copyholder of Inheritance having no Iſſue, intended to leave it to his Nephew, but* being taken ill, he *had no Time to ſurrender it to the Uſe of his Will, for want whereof the Eſtate would deſcend to M. his Siſter; to prevent which A. got M. to give a Bond of* 2000 l. *to the Nephew his Son, condition'd to convey the Lands to her Son and his Heirs upon Requeſt.* The *Son*, after A's Death, *entred and died without Iſſue, but left* 2 *Siſters, no Conveyance being executed by the Mother*; But Lord Chancellor decreed, that ſhe was a Truſtee for her Son and that ſhe ſhould ſurrender to her Daughters, and they to be admitted as Coparceners. 9 Mod. 62. Mich. 10 Geo. Aliſon's Caſe.

(R. d) Attorney. What Services may be done by Attorney.

1. THE principal Duty inſeparably to be done to the Perſon of the Lord, and by his Copyholder, is in doing of *Fealty*, which upon every Admittance he is to do the Lord, for that is eſpecially mentioned in the Copy granted by the Lord in theſe Words, viz. Dat Domino pro Fine, et fecit Domino Fidelitatem, and Fealty *cannot be done but in Perſon*, and not by an Attorney. And although (as Mr. Littleton ſaith) Fealty may be taken by the Steward of the Court of the Lord of the Manor, yet it is done to the Lord himſelf, and it muſt de done by the Copyholder himſelf in Perſon. Supplement to Co. Comp. Cop. 83. S. 18. cites 9 Rep. in Comb's Caſe 75.

2. The *Suit and Service* which is *to be done in the Court of the Lord* by his Copyholder *muſt be done in Perſon* and not by another for him, and it is to be done upon Oath, and a Man cannot ſwear by Attorney, and therefore he cannot make an Attorney to do his Suit and Service, but the ſame muſt be done by him in Perſon. Supplement to Co. Comp. Cop. 83. S. 18.

3. Some particular Things a Copyholder may do by his Attorney, as *he* may *pay his Rent* by his Servant or Attorney, *or tender it by them*, and ſuch Payment and Tender ſhall be good. Supplement to Co. Comp. Cop. 83. S. 18.

4. So if the *Cuſtom* of the Manor be, *that upon the Death of every Copyholder the Tenant ſhall pay and tender his beſt Beaſt* unto the Lord for a Heriot, there the *Heriot may be paid by the Heir* before his Admittance, *or by the Executor* of the Copyholder and ſuch Payment or Tender of it ſhall be good. Supplement to Co. Comp. Cop. 83. S. 18.

(S. d) By-Laws.

1. THE Tenants may *change the By-Laws* at the next Court without the Conſent of the Lord, Per Dyer. Dal. 95. pl. 23. 15 Eliz. Franklin v. Cromwell.

2. By-Laws made in *Court Baron to bind Strangers* that are not Tenants of the Manor, are void. Savil, 74. pl. 151. Mich. 25 & 26 Eliz. Anon.

3. If the *Homage only* make By-Laws, and not all the Tenants, the By-Laws are void. Savil, 74. pl. 151. Mich. 25 & 26 Eliz. Anon.

4. To make By-Laws that they ſhall *not put in their Cattle in their Severalties before ſuch a Day* is void. Savil, 74. pl. 151. Mich. 25 & 26 Eliz. Anon.

5. By-Laws *to bind Strangers* are not good, though they are made by the Homage, and by all the Tenants, and of ſuch Things whereof By-Laws may be made. Savil, 74. pl. 151. Mich. 25 & 26 Eliz. Anon

6. Every By-Law ought to be made *for the Common Benefit* of the Inhabitants, and not for the private Commodity of any particular Man, as J. S. only, or the Lord only; As if a By-Law be made that none ſhall put his Beaſts into the Common Field before ſuch a Day, it is good; but if a By-Law be made that they ſhall *not carry Hay upon the Lord's Lands*, or *break the Hedges of J. S.* this is not good, becauſe it reſpects not the Common Benefit of all; Per Periam J. Godsb. 79. pl. 13. Hill. 30 Eliz. Anon.

7. Per Windham J. ſome Books are, that By-Laws ſhall *bind no more than ſuch as agree to them.* Goldsb. 79. pl. 13. Hill. 30 Eliz. Anon.

8. A By-Law in a Manor *binds the Tenants without Notice*, becauſe they are ſuppoſed to be within the Manor; Per Hale Ch. J. Vent. 167. Mich. 23 Car. 2. B. R. Iſaac v. Ledgingham.

(T. d) Charitable Uſes.

See Tit. Charitable Uſes.

1. IN Caſe of charitable Uſes the *Lord* of the Copyhold *ſhall have his Duties* always *of Fines*, *Heriot &c.* of the Heir, or Purchaſor in whoſe Name the Intereſt of the Copyhold reſts in Law, and he ſhall have an *Allowance* made him out of the charitable Uſe. Mo. 890. pl. 1253. Anno 1586. Rivet's Caſe.

(U. d) Common.
How Lord or Tenant are intereſted therein, and alſo in the Soil.

1. THIS *Cuſtom* might have a lawful Commencement that *one Copyholder ſhould only have Common &c. in the Land of the Lord*, and *by the Cuſtom of ſome Manors, ſome Copyholders have Common in one Waſte* of the Lord, *and ſome in another* ſeparately, and all the Copyholders may be extinct, ſave one. 4 Rep. 32. a. b. pl. 25. Mich. 29 & 30 Eliz. B. R. Foiſton v. Cracherode.

A *Cuſtom for one Copyholder to have Common &c. in his Lord's Soil* is good; For all the other Copyholders may have forfeited their Eſtates or Intereſt therein. Gilb. Treat. of Ten. 208.

2. If the *Copyholder for Life* has *uſed to have Common* of Paſture or Eſtovers in the Lord's Woods or Waſtes, *and after the Lord aliens the Waſtes*, or Woods to another in Fee, and after *grants a Copyhold Eſtate according to the Cuſtom*, the Copyholder muſt have Common there as hath been us'd, but in this Caſe the *Cuſtom muſt be laid ſpecially*; otherwiſe it is of a Leaſe for Life by Deed. 8 Rep. 63. b. 64. a. Mich. 6 Jac. Swayne's Caſe.

If the Lord makes a Leaſe for Years of the Manor with Exception of the Trees, and the Leſſee or his Aſſignees grant a Copyhold for 3 Lives according to the Cuſtom, and it is found that the Cuſtom is, that a Copyholder may top and lop the Trees for Fireboot, he may juſtify the doing it; becauſe the Copyholder is in by the Cuſtom, paramount the Exception of the Trees in the Leaſe; adjudged by all the Court. Mo. 811. pl. 1098. Trin. 5 Jac. C. B. Swaine v. Becket. ——— Brownl. 231. S. C. held accordingly per tot. Cur.

3. In Treſpaſs &c. Quare Clauſum fregit &c. and putting in his Cattle &c. The Defendant juſtified, for that the Place where is Parcel of the Manor of Haye, in which Manor there is a Cuſtom, that it ſhall be lawful for the Lord of the Manor to have Common in the Lands of the Tenants thereof for Life, or Years, when they lie freſh, and upon a Demurrer this was adjudged a *void Cuſtom, and againſt Law, that the Leſſor ſhall have Common againſt his own Demiſe, becauſe it is Parcel of the Thing demiſed.* Palm. 211. Mich. 19 Jac. B. R. White v. Sawyer.

4. The Lady W. being Lady of the Manor of Stepney, exhibited a Bill to eſtabliſh an Uſage and *Cuſtom* within the ſaid Manor ever ſince the Reign of H. 8. which was, *that the Lords of the* ſaid *Manor might, upon the Preſentment of 7 of the Copyholders* thereof, *determine what waſte Ground was fit to be ſet out and incloſed, in order to build on* the ſame, *and ſuch Preſentment being agreed unto by the Major Part of the Homage at the next Court, the ſame was ſet out and incloſed accordingly, without any Moleſtation or Diſturbance by the Tenants*; that ſuch a Preſentment was made in Manner as aforeſaid of ſeveral Parcels of Waſte Ground to build on in Mile-End Green, where ſince the great Fire, Filth and Carrion had been uſually laid, to the great Anoyance not only of ſome of the Tenants, but of all others paſſing that Way; that this Preſentment was allowed by the major Part of the Homage at the next Court, and which is now ſought to be eſtabliſhed by a Decree of this Court, the rather, becauſe it is oppoſed by ſome of the Tenants of the ſaid Manor, who have brought Actions &c. pretending, though very untruly, that they have a great Loſs of Common by ſetting out and encloſing ſuch Ground; that by Indenture dated 15 June 15 Jac. the Lord W. in Conſideration of 3500 *l.* paid to himſelf, and 3000 *l.* more to his Father

Henry, Lord W. did grant and confirm to the Tenants their Privileges and Cuſtoms, and particularly the Commons which they then enjoyed, with Liberty to dig Gravel, Clay, or Loam, to repair or build any of their Copyhold Tenements, and covenanted for the quiet Enjoyment againſt him, his Heirs and Aſſigns; that the reaſon why no Diſturbance of this Nature hath been hitherto given is, becauſe there was never any ſuch Incloſure for building, under Pretence of ſuch an Uſage and Cuſtom till now. Upon reading of ſeveral Court Rolls of the ſaid Manor from the Reign of H. 8. till the Reign of Car 2. relating to the ſaid Uſage, and hearing all Parties, the Court decreed, that this was reaſonable Uſage, and fit to be eſtabliſhed, and that the Plaintiff hath proceeded according to the Uſage in procuring the ſaid waſte Ground, called Mile-End Green, to be ſet out, preſented, and allowed by the Homage, and incloſed as aforeſaid, and ſo had Power to grant Leaſes and Eſtates thereof at her Pleaſure to be incloſed, and kept in Severalty &c. Fin. Rep. 263, 264. Trin. 28. Car. 2. 1676. Lady Wentworth & al'. v. Clay & al'.

(W. d) Copyholders Intereſt as to Commons.

Vent. 123. S. C adjornatur.—— Ibid. 163. S. C. the whole Court held the Preſcription good, and being laid as a Cuſtom in the Manor, it was not needful to expreſs the Copyhold Eſtates; that it does not take away all the Profit of the Land from the Lord; For his Intereſt in the Trees, Mines, Buſhes &c. continues.

1. THOUGH the Copyholders have *ſolam & ſeparalem Paſturam* &c. yet the Lord may diſtrain for other Damage the *Beaſts of a Stranger*, who has no Right to put in his Beaſts, though the Lord has no Intereſt in the Herbage; Per Hale Ch. J. 2 Saund. 328. Hoskins v. Robins.

2 Lev. 2. S. C. and the Cuſtom held good.

2. The cuſtomary Tenants of a Manor allege a *Cuſtom pro ſola & ſeperali Paſtura in* &c. *quolibet Anno per totum Annum* &c. The Cuſtom is good, and might alſo have a reaſonable Commencement; One may preſcribe for the ſole Feeding, becauſe *it might have its Commencement by Grant, and if it be good by Preſcription, it may be good by Cuſtom*, and ſuch a Cuſtom at firſt *might commence by the voluntary Agreement of the Lord with the Tenants to induce them to hold their Eſtates, which were then but Eſtates at Will, and to beſtow their Pains and Labour in Improvement*, and ſo a continual Uſage had now made a Cuſtom for the ſame Reaſon, that it had now fixed their Eſtates and made them Permanent, and enabled them to bring Actions againſt their Lord, if he puts them out of their Eſtates contrary to the Cuſtom. 2 Saund. 326. 328. Paſch. 23. Car. 2. B. R. Hoskins v. Robins.

3. In Canc. Mich. 1726. in Manor of Hamſtead, one Rous having *built* the Long Room *on Hamſtead Heath by a new Copy from the Lord, without the Conſent of the Homage*, a *Bill for eſtabliſhing the Cuſtom of this Manor pray'd to pull it down, as an Incroachment on the Common* or Waſte, but Iſſues being directed to try ſeveral other Cuſtoms of this alſo, King Chancellor ſaid, that though it might be reaſonable for Rous to be reſtrain'd from building any farther, yet as to *what he had done, being ſuppos'd at* 3000 l. *Expence, the Commoners ſtanding by*, he would not let it be pull'd down, for *on laying the firſt Stone the Commoners ought to have objected to it*, and an Injunction, ſtaying him to go on to finiſh his Buildings, was diſſolv'd; this was declar'd proviſionally until the Iſſues were tried. MS. Rep.

(X. d) Cottages built on the Waſte.

1. THE Plaintiff was Lord of the Manor of Ewell in Surry, and brought his Bill, claiming an Houſe in Ewell built upon the Waſte. It was ſaid by Lord Chancellor, that the Lord of a Manor is never ſaid to be out of Poſſeſſion; that what is built upon the Waſte is his, and that upon a Trial before Juſtice (John) Powell, touching ſome Cottages or Tenements built upon the Waſte, *though the Lord had not been in actual Survey* of the Cottages or Tenements in Queſtion *for* 60 *Years, and there had been ſeveral Fines levied thereon*, by the Opinion of the Judge *the Lord had a Verdict*. MS. Rep. 13 July, 1726. in Canc. Loyd v. Bartlet.

2. It has been ruled in Evidence at the Aſſiſes, that a *Cottager* on the Lord's Waſte lives there by the Lord's Conſent, and ſo *is only a Tenant at Will*, but this is very doubtful where there has been a *long Poſſeſſion*; Said by Pratt Ch. J. Mich. 11 Geo. B. R. And per Cur. 20 *or* 25 *Year's Poſſeſſion is a good Title in an Ejectment, as well as a Bar to an Ejectment.*

(Y. d) Court-Rolls.
What Intereſt the Tenant has in them.

1. IT was ordered, that Court-Rolls ſhould be brought and *ſhewed to Counſel, to ſhew which is Copyhold, and which is Freehold.* Toth. 109. cites 12 Jac. Corbett v. Peſthall.

2. *Tenant* by Copy *has an Intereſt* in the Rolls of the Court as well as the Lord, *becauſe it is his Evidence*, and the Lord cannot deny Copyholder *Acceſs to* the Rolls; Per Doderidge. Lat. 182. Mich. 2 Car. Widow Stacy's Caſe.

Lord, and Tenants, and Copyholders, may have a Bill one againſt another to have the Uſe of them, as well as againſt Strangers. Hard. 180. pl. 2. Paſch. 13 Car. 2. in Scacc. in Caſe of Langham v. Lawrence.——5 Mod. 396. S. P. per Cur. Paſch. 10 W. 3. —— D. 264. Marg. pl. 38 cites S. C.

3. A *Copyholder* being ſued in B. R. for certain Lands, *moved that the Steward* of the Court might *be ordered to bring in the Rolls into B. R.* that by them he may be the better enabled to defend his Title to the Lands; Per Roll J. this Court cannot order him to do it, ſo would make no Rule in it. Sty. 128. Trin. 24 Car. B. R. Anon.

5 Mod. 396. Arg. and ſeems admitted by the Court, that it has been frequently ordered for Stewards to grant Copies, and produce the Rolls at Trials.——Fin. Rep. 249. Paſch. 28 Car. 2. ordered that the Plaintiff, in a Bill for Diſcovery of Deeds &c. ſhould have Recourſe to the Records, Rolls, and Evidences of the Manor, in which the Lands claimed, lie, to view, peruſe, and take Copies thereof, (paying for the ſame) and order'd, that the Defendant and his Heirs, Lords of the ſaid Manor, ſhould produce ſo many thereof at any Trial at Law as the Plaintiff or his Heirs ſhould at any Time require to be produc'd, but at the Charge of the Plaintiff, his Heirs, or Aſſigns.

4. Bill to *have certain Surrenders made up and ingroſſed* which were made, but not engroſſed; Plaintiff and Defendant were Brothers; Per Finch

Finch K. the Father being *Lord* of the Manor *cannot declare the Truſts* of Copyhold granted to his Son, though he took the Profits always by their Conſent. Ch. Caſes 261. Trin. 27 Car. 2. Dowdſwell v. Dowdſwell.

5. If the Lord of a Manor *refuſes* a Tenant *a Sight, or Copy* of a Court-Roll, to make ſuch Uſe of them as the Tenant may think proper, either to ground a Fine upon or make his Defence, he ſaid Hale was of Opinion an *Attachment* ſhould go againſt the Lord; Per Holt Ch. J. 11 Mod. 111. Paſch. 6 Ann. B. R. Anon.

(Z. d) Cuſtomary Court.

Cro. E. 102, 103. pl. 10. S C. held that tho' the Tenements are divided from the reſt of the Manor, yet, the Cuſtom remains, and they continue Copyholders, paying their Services and Duties &c. and that he who has the Freehold of them may keep a Court in any Place, and it is *not properly a Court Baron, but as a Court of Survey*, at which Copyholds may well be granted, and the Lord or his Steward may grant Copies out of Court as well as in Court.——Ibid. the Reporter adds a Nota, that a Writ of Error was brought of this Judgment in the Exchequer Chamber, and the Error aſſigned in the Matter of Law, but no Judgment given; for the Parties compounded, and agreed with the Plaintiff in the Writ of Error, and he had the Lands, as Ewens who was of his Councel told me, for he ſaid, that all the Juſtices and Barons in the Exchequer Chamber did hold clearly, that it was a void Grant by Copy; for being divided from the Manor, the Cuſtom to demiſe them is altogether gone and deſtroyed, ſo as the Eſtates for Life which were in Eſſe at the Time of the Alienation of the Freehold of them and Severance of them, being now determined by Surrender, or otherwiſe, no new Copy can be made, yet the Alienation of the Freehold of them doth not deſtroy the Eſtates of the Copyholders then in Eſſe, but they ſhall hold them during their Eſtates, paying their Services; but no new Eſtates may be afterward granted by Copy——Gilb. Treat. of Ten. 196 ſays, that ſince every Manor, conſiſting of Freeholders and Copyholders, has 2 Courts one a Court Baron, and the other a Court for Copyholders, whereof the Steward is Judge, what Reaſon is there, theſe being ſeveral Courts, and there are ſeveral Judges of them, that the want of Freeholders ſhould hinder the Grantee from keeping a Court for granting Eſtates by Copy, eſpecially ſince the Conſequence is ſo fatal; and therefore *if the Lord releaſes the Service and Tenure of his Freeholders, yet the Lord may keep a Court for his Cuſtomary Tenants*, and ſo tho' the Lord cannot make 2 Manors of one, conſiſting of Demeſnes and Services, yet by his own Act he may make a Manor of Copyholders; this ſeems to be but a Diviſion of the Courts, which before were in one, for a Manor ſeems to be ſo to two Intents, as to the Freeholders and as to the Copyholders, and ſo in Effect ſeems to be a double Manor, and therefore are there ſeveral Courts in Effect, and ſeveral Judges, according to the Matter that is before them; and ſo *it is no new making of a Manor to grant the Inheritance of the Copyholds, but only to put that into the Hands of 2 Men which before was in one, and yet was as much two Manors then as now.*

1. IF the *Lord of a Manor having many Ancient Copyholds in a Vill grants the Inheritance of all of them*, the Grantee may hold Court for the Cuſtomary Tenements, and accept Surrenders to the Uſe of others, and make Admittances and Grants; For though it be no Manor in Law becauſe it wants Frank-Tenants, yet as to the Copyhold Tenants rhe Feoffee or Grantee has ſuch a Manor, that he may hold Court and make Admittances and Grants of the Copyhold Tenements; for *every Manor which conſiſts of Frank-Tenants, and Copyhold Tenants, comprehends in Effect in it ſelf 2 ſeveral Courts*, viz. *a Court Baron for the Frank-Tenants, in which the Suitors are Judges; and another for the Copyholders, in which the Lord or the Steward is Judge*; and the Grantee of the Inheritance of the Copyholds may hold ſuch Court for the Copyhold Tenements only, as the Grantor might. 4 Rep. 26. b. Trin. 30 Eliz. B. R. the 3d Reſolution in Caſe of Melwick v. Luter.

4 Rep 26. b. 27 a. S C. and held per tot.

2. Lord of a Copyhold Manor *leaſed the Court Baron for* 2000 *Years, ſaving to himſelf the other Demeſnes and Services*; the Leſſee held Court, and a Copyholder ſurrendered to the Uſe of A. in Fee. 'Twas held, that

that a Copy to A. was good, and Anderſon ſaid it had been held ſo in Lord **Hatton's Caſe** and ſeveral others ſince, and that it had oftentimes been held, that the Court may well continue as to that Purpoſe for Admittance of Copyholders, for otherwiſe every one of his own Act might deſtroy his Copyholder's Eſtate. Cro. E. 394. pl. 21 Paſch. 37 Eliz. C. B. Jackſon v. Neal.

Cur. that ſuch Leſſee might hold Court for the Copyholds according to the Reſolution of the 3d Point in Melwich's Caſe and cited it as ſo reſolved in Sir Chriſtopher Hatton's Caſe, and the Reporter ſays, Nota, a good Diverſity between thoſe Caſes which conſiſt of a Number of Copyholds which may ſupport a Cuſtom and a ſingular Caſe of a Copyhold, as in Murrel's Caſe, in which the Lord did not grant tacitly any Cuſtomary Court, nor the Grantee, having but one ſingular Copyhold, could not hold Court.——Gilb. Treat. of Ten. 196. cites S. C. and ſame Diverſity.

3. If a *Feme* be *endow'd of ſeveral Copyhold Tenements, ſhe may keep a Court and grant Copies, though the Services of any of the Freeholders were not allotted to her, but the Demeſnes and the Copyhold Tenements only*; For though ſhe having no Services cannot hold a Court Baron, yet ſhe may have a *ſpecial Court* for this Purpoſe, and it is good enough; Per Popham clearly, and cited **Sir Chriſtopher Hatton's Caſe** for Wellingborough, where it was adjudg'd, that where he had 20 Copyhold Tenements, Parcel of the ſaid Manor, granted to him by the Queen, and becauſe ſome of them refuſed to come to his Court they forfeited their Copyholds. Cro. E. 662. pl. 10. Paſch. 41 Eliz. B. R. Gay v. Kay.

Supplement to Co. Comp. Cop. 82. S. 17. cites S. C. ——Gilb. Treat. of Ten. 199. cites S. C. ſays that this being done by Act in Law no Prejudice could accrue to any body.

(A. e) Cuſtoms. Good. And How to be Proved.

1. THE Cuſtom of *Cliven or Landmark* is, that if any Copyholder is *about to Sell* his Copyhold, *Proclamation ſhall be made* in Court, that *if the next of Blood* of the Vendor, *or* in Default of him, the *next Neighbour* of the Vendor ſhall come to Court at Sun-riſe, and *will pay as much as the Bargainee* has agreed to pay, that he ſhall have the Land notwithſtanding the Bargain. Jenk. 274. pl. 95.

2. Continuance for 50 *Years* is requiſite to faſten a *cuſtumary Condition* upon the Land *againſt the Lord*, and Seiſure for a Forfeiture is an *Interruption* of the Continuance, ſo that the Time before the Forfeiture is of no Account, per tot. Cur. 3 Le. 107. pl. 158. Trin. 26 Eliz. B. R. Taverner v. Cromwell.

4 Rep. 27. a. b. pl. 15. S. C. but S. P. does not appear. —— Cro. E. 353. pl. 10. S. C. but S. P. does not appear.

3. In Treſpaſs the *Iſſue was, if the Lord of the Manor granted the Lands per Copiam Rotulorum Curiæ Manerii ſecundum Conſuetudinem Manerii prædict'*. It was given in *Evidence, that the Lord of late, at his Court, granted the Lands per Copiam Curiæ, where it was never granted by Copy before*; In that Caſe the Jury are bound to find Quod Dominus non conceſſit, as it was holden by the Court; for altho' De facto Dominus conceſſit per Copiam Rotulorum Curiæ, yet Non conceſſit ſecundum Conſuetudinem Manerii prædict'. Supplement to Co. Comp. Cop. 82. S. 16. cites Leon. 56. Paſch. 29 Eliz. C. B. Kemp v. Carter.

4. To prove a Cuſtom *to grant Leaſes for Years*, 'tis not Sufficient to prove it for 30 or 40 Years, but it ought to be from Time whereof &c. Cro. E. 351. pl. 3. Mich. 36 & 37 Eliz. B. R. Jackman v. Hoddeſton.

5. Cuſtom *to ſeiſe the Land till Fine made* with the Lord, for it was held a reaſonable Cuſtom. Cro. E. 351. pl. 3. Mich. 36 & 37 Eliz. B. R. Jackman v. Hoddeſton.

6. There is a *Difference between* a Preſcription for *Freehold Land and for Cuſtomary Land*; for *Cuſtom, which concerns Freehold, ought to be throughout the County*, and cannot be in particular Place, 45 Aſſ. *But* a Preſcription *concerning Copyhold Land* is *good in a particular Place*, for De Minimis non curat Lex, and the Law is not altered thereby, and it may be there is but one Copyholder there, for which he might preſcribe, and Beamond agreed this Difference, for Cuſtom to have Profit Apprender, Privilege, or Diſcharge, may very well be in a Particular, and by Owen it was ruled accordingly in **Collis's Caſe** in the Queen's Bench. Cro. E. 353. pl. 10. Mich. 36 & 37 Eliz. C. B. in Caſe of Taverner v. Cromwell.

Roll Rep. 43. pl. 17. Trin. 12 Jac. cites Crabb v. Bevis, S. P. adjudged in C. B. and affirmed in B. R.

7. Cuſtom that a *Copyholder for Life may nominate one or two to ſucceed him for a Fine to be aſſeſſed by the Homage*, if they cannot agree with the Lord, adjudged to be good. Noy 3. Paſch. 3. Jac. B. R. Crabb v. Bales.

8. 'Tis not ſufficient to *prove an Uſage for the Sole Paſture* to ſhew that the Tenants only had fed it, unleſs it were proved alſo, that the Lord had been oppoſed in the putting in of his Cattle, and the Cattle impounded from Time to Time; per Hale Ch. J. Vent. 165. Mich. 23 Car. 2. B. R. Hoskins v. Robinſon.

(A. e. 2) Cuſtoms purſued. In what Caſes they muſt be.

1. IF the *Cuſtom does warrant Eſtate only durante Viduitate*, and the *Lord admits for Life*; this ſhall not bind his Heir or Succeſſor, becauſe Cuſtom has not ſufficiently confirmed it. Co. Comp. Cop. 52. S. 41.

2. So *if the Lord fail in reſerving Verum & antiquum redditum*, *as* if he reſerved 10 *s.* *where the uſual Rent cuſtomably reſerved is* 20 *s.* this may be a Means to avoid the Admittance. Co. Comp. Cop. 52. S. 41.

3. And the Law is very ſtrict in this Point of Reſervation, for *tho' the ancient accuſtomable Rent be reſerved according to the Quantity, yet if the Quality of the Rent be altered, the Heir may avoid this Grant.* For if the ancient Rent from time to time has been 20 *s.* *in Gold* and the *Lord reſerves it in Silver*, this Variance of the Quality of the Rent is in force to deſtroy the Grant. Co. Comp. Cop. 52. S. 41.

4. *So if* the ancient Rent has been *accuſtomably paid at* 4 *Feaſts* in the Year, *and the Lord reſerves it at* 2 *Feaſts.* Co. Comp. Cop. 52. S. 41.

5. *So if* 2 *Copyholds eſcheat* to the Lord, *the one* of which has been *uſually demiſed for* 20 *s.* *Rent*, *the other for* 10 *s.* Rent, and *he grants them both by one Copy for one Rent of* 30 *s.* this is not good. Co. Comp. Cop. 52. S. 41.

6. So

6. *So if* a Copyhold of 3 *Acres eſcheats, which has ever been granted for* 3 *s. Rent*, and the *Lord grants one Acre, and reſerves pro Rata* 1 *s. Rent*, verus & antiquus Redditus is not reſerved. Co. Comp. Cop. 52. S. 41.

7. *But if* a Copyhold of 6 *Acres, which has ever been demiſed for* 6 *s. Rent, eſcheats to* 2 *Copartners*, and *one grants* 3 *Acres, reſerving* 3 *s. pro Rata*; this is a perfect Reſerving. Co. Comp. Cop. 52. S. 41.

8. A *Cuſtom* was found in a Manor, *that where an Eſtate was granted to A. for Life, Remainder to B. for Life, Remainder to C. for Life, that A. had Power to deſtroy the Remainder by Surrendring the Eſtate in Court* &c. and it was found that *A. granted it away by Fine*, and it was held per Cur. that the Remainders were not deſtroyed nor granted by the Fine; for this being a Cuſtom againſt common Right, that one Man ſhould deſtroy the Right of another, it ought to be purſued ſtrictly; and the Cuſtom being found to do it by Surrender, a Fine ſhall not have that Operation within the Cuſtom. Freem. Rep. 263. pl. 284. Mich. 1679. Talmarſh v. Zinzay.

(A. e. 3) Cuſtoms. General or Special. Good or not. And Extent thereof.

1. A Cuſtom *that a Leſſee for Years may hold* the Land *for half a Year after his Term ended*, is no good Cuſtom; agreed by all the Juſtices, *but the Lord* of a Copyhold *may by Cuſtom leaſe* the ſame *for Life, and* 40 *Years after*, and it is good, but a Cuſtom that Leſſee for Life may leaſe pur auter Vie is not good; Per Montague and Hales. Mo. 8. pl. 27. Hill. 3 E. 6. Anon. S. C. cited Gilb. Treat. of Ten. 307.

2. By the Cuſtom of a Manor, *the Lord of a Manor might aſſign one to take the Profits of a Copyhold deſcended to an Infant, during his Nonage to the Uſe of the Aſſignee, without rendering an Accompt*, and the ſame was holden to be good Cuſtom; As a *Rent granted to one and his Heirs, to ceaſe during the Nonage of every Heir.* Le. 266. pl. 357. 20 Eliz. C. B. Anon.

3. A Copyholder did allege the Cuſtom to be, *That the Lord* of the Manor *might grant Copies in Remainder with the Aſſent of the Tenants, and not otherwiſe*, and that Copies in Remainder otherwiſe granted ſhould be meerly void. The Queſtion was, Whether it were a good Cuſtom? The Juſtices did not deliver any Opinion in the Point. Shuttleworth Serjeant ſaid, that this Cuſtom might have a lawful Beginning, and it ſeems to be grounded upon the Reaſon of the Common Law, that a Remainder ſhould not be without the Aſſent of the particular Tenant, and therefore it is a good Cuſtom. It was adjourned. Godb. 140. pl. 171. Mich. 31 Eliz. C. B. Anon. Supplement to Co. Comp. Cop. 84. S. 19. cites S. C and ſays, Quære the Caſe; for it was not reſolv'd.

4. A *Cuſtom* was, *that a Copyholder of Inheritance might make a Letter of Attorney to* 2 *jointly and ſeverally, to ſurrender his Copyhold Lands in Fee to certain Uſes after his Death.* It was reſolved, that the Cuſtom was a void Cuſtom, becauſe by the Death of the Copyholder the Lands were ſettled in the Heir, and an Authority given to diveſt him was not good. Supplement to Co. Comp. Cop. 85. S. 19.

5. If the *Lord* have *uſed certain Work-Days of his Tenants, and* that has *not been uſed by the Space of* 20 *Years laſt paſt*, yet that *Non Uſer is no Diſcharge* to the Tenants, ſo that there be *any in Life that can remember the ſame.* Calth. Reading. 25.

6. If

6. If the *Tenants have uſed to pay* to their Lord *every 4th Year a double Rent, and every 6th Year an half Rent*, this is a good Inter-Uſer. Calth. Reading, 26.

7. If the Cuſtom is, that *if the Copyholder dies without Heir*, that then *the eldeſt Tenant of that Name, of the ſaid Manor, ſhall have his Land*, this is a good Cuſtom, and contains in itſelf ſufficient Certainty. Calth. Reading. 31.

8. Cuſtoms and Preſcriptions *muſt be according to common Right*, that is, to preſcribe to have ſuch Things as is their Right and Reaſon to have, and *not* by Cuſtom of Preſcription *to claim Things by way of Extortion*, or thereby to exact Fines, or other Things of his Tenant, without good Cauſe or Conſideration. Calth. Reading, 33.

9. If the Tenants have *uſed when they Sow their Lands to pay the Lord Rent-Corn, and when it lies in Paſture to pay* their Rents *in Money*, this is a good Inter-Uſer. Calth. Reading, 25.

Gilb Treat. of Ten. 305. cites S. C. that it is a void Cuſtom, becauſe it obliges the Lord who has the Intereſt, to grant it to this or that particular Perſon, whether he will or not.

10. Cuſtom, that after the Death of the Tenant for Life of a Copyhold, the *Lord* is *compellable to make an Eſtate to the eldeſt Son for Life, and if he hath no Son to the Daughter*, and ſo in Perpetuum. Popham and Cook were of Opinion, that the ſame was againſt Law, it being to compel the Lord to make a Grant, but otherwiſe where he is only to make an Admittance. Mo. 788 pl. 1088. 4 Jac. in the Star-Chamber. Ld. Grey's Caſe.

S. C. cited Gilb. Treat. of Ten. 303.

11. Cuſtom that *if a Copyholder in Fee marries* a Wife, *if the Wife ſurvives She ſhall have the Fee*, et ſic e Converſo, and agreed to be good. Noy. 2. cites Taunton Dean Cuſtom's Caſe.

Roll Rep. 125. pl. 7. S. C reports the Cuſtom to be, that every Copyholder for Life may nominate who ſhall have it for Life after his Death; Coke and Doderidge ſaid, that this had been adjudg'd a good Cuſtom in B. R. and in C. B.—Ibid. 195. pl. 37. S. C. and Judgment per tot. Cur. againſt the Plaintiff. —— Gilb. Treat. of Ten. 305. cites S. P. as good, for it is a Right and Intereſt veſted in the Tenant for Life; ſed Quære.

12. Cuſtom, *that Copyholder for Life in Extremis may nominate his Succeſſor* to have the Copyhold, *paying a reaſonable Fine to be agreed upon by the Lord, or if that fail to be aſſeſſed by the Homage*, and a good Cuſtom. Noy. 2. cites Yelmeſter Cuſtom's Caſe.

4Le. 237 pl. 331. Ball's Caſe, S. C. *but the Tenants ought not to aſſeſs a leſs Sum for a Fine than uſed to be paid, where the Ld. would aſſeſs a reaſonable Fine*; and adjudg'd a good Cuſtom.

13. By an eſpecial Cuſtom within the Manor, a Copyholder may appoint or *nominate, in the Preſence of two Tenants of the Manor, or other 2 ſufficient Witneſſes, who ſhall have his Copyhold Lands after his Deceaſe, and alſo that they may appoint what Fine the Lord ſhall have for the Admittance of the Tenant, ſo it be a reaſonable Fine*, and ſuch Diſpoſition of his Lands and Appointment of Fine ſhall be good by the Cuſtom, but yet after ſuch Diſpoſition made, the Party who is to have the Land muſt in Perſon come into the Lord's Court, and pray to be admitted unto the ſame; and ſo was it very lately adjudged in C. B. both for the Point of the Cuſtom, that it was a good Cuſtom and Admittance. Supplement to Co. Comp. Cop. 83. S. 18. cites Mich. 5 Jac. in B. R. Bale's Caſe.

Such Cuſtom ſhall be taken ſtrictly. Supplement to Co Comp. Cop. 84. S. 19. cites S. C. —— 4 Le. 242. pl. 395. Ratcliffe v. Chaplin, S. C. and Coke Ch. J. ſaid, that there are two Pillars of a Cuſtom, one the Common Uſage, and the other, that it be Time out of Mind, and therefore upon the Evidence given to the Jury the Court inforced the Parties who maintained the Cuſtom, to ſhew Precedents in the Court Rolls to prove the Uſage, and he ſaid, that without

14. It was ruled by the whole Court, that if a *Cuſtom* be alleged, *that the eldeſt Daughter* ſhall ſolely inherit, that the *eldeſt Siſter* ſhall not inherit by Force of that Cuſtom. Godb. 166. pl. 232. Paſch. 8 Jac. C. B. Rapley v. Chaplein.

without ſuch Proof, and that it had been put in Ure, although it had been deem'd and reported to have been the true Cuſtom, yet the Court cannot give Credit to the Proof by Witneſſes.

15. *So* if the Cuſtom be that the *eldeſt Daughter and the eldeſt Siſter* ſhall inherit, the *eldeſt Aunt ſhall not* inherit by that Cuſtom. Godb. 166. pl. 232. Paſch. 8 Jac. C. B. Rapley v. Chaplein. — 4 Le. 242 pl. 395. S C. & S P. agreed per Cur.

16. *So* if the Cuſtom be that the *youngeſt* Son ſhall inherit, the *younger Brother* ſhall not inherit by the Cuſtom; and Foſter J. ſaid, that ſo it was adjudged in one Denton's Caſe. Godb. 166. pl. 232. Paſch. 8 Jac. C. B. Rapley v. Chaplein. — 4 Le. 242. pl. 395. Ratcliffe v. Chaplin, S. C. & S. P. agreed, per Cur.

17. Cuſtom, *that if a Copyholder will ſell his Copyhold Eſtate*, that *he which is next of Blood to him ſhall have the Refuſal, and if none of his Blood, then he which inhabits in the neareſt Part* of the Part *of the Ground ſhall have it before a Stranger, giving for that as much as a Stranger would, and the Lord ſhall have him for his Tenant, whether he will or no*; for it ſhall be intended, that ſo it was agreed at the firſt, and it is reaſonable, and if it had not been ruled and adjudged before, yet he conceived it might now be a Rule and adjudged, inſomuch that it is ſo reaſonable and good; Per Warburton J. 2. Brownl. 196. Trin. 10 Jac. C. B. in Caſe of Rowles v. Maſon. — Brownl. 132. S. C. but S. P. does not appear. —— Gilb. Treat. of Ten. 307. cites S. P. and ſays, it ſeems that the Reaſonableneſs of a Cuſtom is to be conſidered, not from the Rules and Maxims of the Common Law, (for there is no Cuſtom but what in ſome Point or other overthrows the Common Law) but from the Conveniency of the Thing itſelf; As if there be a Cuſtom that a Copyholder ſhall not put in his Beaſts to take the Common before the Lord has put in his, this is a void and unreaſonable Cuſtom, becauſe it is in the Power of the Lord by this Means to take away the Intereſt of his Commoners,

18. Upon Evidence it was admitted by the Court to be a good Cuſtom, *that an Executor or Adminiſtrator ſhall have a Year in the Land of a Copyholder againſt the Wife that Claims her Frank-bank* or durante Viduitate. Noy. 29. Hill. 15 Jac. C. B. Rennington v. Cole. — Gilb. Treat of Ten. 303 cites S. C.

19. The Cuſtom of a Manor was, *that the Land was demiſable for 21 Years, paying the treble Value of the Rent, and if he died within the Term, that the Term ſhould be to his Heir, paying a Fine certain of one Year's Rent, and if he aſſigned it*, the *Aſſignee to have it for a Fine of one Year's Value of the Rent*, and *that he who had it might by the Cuſtom renew it for 21 Years, paying 3 Years Value*, and the Cuſtom was admitted per Cur. to be good. Cro. J. 671. pl. 2. Mich. 21 Jac. B. R. Page's Caſe. — S. C. cited Gilb. Treat. of Ten. 307. —— Supplement to Co. Comp. Cop. 85. S. 19. cites S. C.

20. Cuſtom of a Manor, *that the Steward might make Laws and Ordinances for the better ordering the Commons*, and to aſſeſs a Sum by way of Penalty on thoſe Tenants who broke thoſe Orders, and alſo to preſcribe to diſtrain for that Penalty; the Steward made an Order, that he who ſhould put his Cattle beyond ſuch a Boundary ſhould pay 3 s. 4d The Plaintiff James offended againſt this Order, and thereupon a Penalty was aſſeſſed on him, for which Tutney, the Defendant, as Bailiff of the Lord, diſtrained, and in Replevin made Cognizance for the taking, &c. Adjudged, and affirmed in Error that this was a reaſonable Cuſtom, for it did not take away the Profit of the Commons, but this Order ſets Limits, and Bounds to them. Mar. 28. pl. 64. Trin. 15 Car. James v. Tintney. — Jo. 421. pl. 9. S. C. & S. P. agreed, but Exception was taken as to other Matters, in which the Court differed. —— Cro. C. 497. pl. 2. James v. Tutney, S. C. & S. P. adjudg'd and affirmed in Error. —— Gilb. Treat. of Ten. 306. cites S. C. and that the Cuſtom is good; but that an Order that a Tenant ſhall not put in this or that Beaſt is void, becauſe it takes away his Inheritance; but if it were that he ſhould not do it before ſuch a Day, that is a good By-Law, being not reſtrictive of his Inheritance, but only directive of it. —— See Tit. By-Laws (A. 2) pl. 14.

Gilb. Treat of Ten. 305 cites S. C. accordingly; for the Under-Tenant is not a mere Stranger.

21. The Cuſtom was, that *if a Copyholder ſuffer his Houſe to be out of Repair, that he might be amerced*, and *that the Lord might diſtrain his Tenants Cattle, and likewiſe the Cattle of any Under-Tenant, levant and couchant* on the Copyhold Lands, for the ſaid Amerciament, which was done accordingly. Bramſton Ch. J. held, that this was a good Cuſtom; for the Cuſtom that gives the Diſtreſs knits it to the Land, and therefore not merely Perſonal; And if the Cuſtom had not extended to the Under-Tenant, yet he might have diſtrained him; For otherwiſe the Lord by ſuch a Device of making a Leaſe for one Year by the Tenant he ſhould be defeated of his Services. Mar. 161. 164. pl 231. Hill. 17 Car. Thorne v. Tyler.

22. The Cuſtom of a Manor was, *that if a Copyhold Tenant did ſuffer his Meſſuage to be ruined for want of Reparations, and the ſame be preſented in Court by the Homage, that ſuch a Tenant ſhould be amerced, and that the Lord had uſed to diſtrain the Beaſts as well of the Under-Tenant as of the Tenant himſelf, which were levant and couchant upon the Lands, for ſuch Amerciament.* It was ſaid, that the Cuſtom was not good, but unreaſonable, to diſtrain a Stranger's Cattel, ſuch as the Under-Tenant was; but it was reſolved, that the Cuſtom was good; for the Under-Tenant, altho' he was but Tenant for a Year, yet he ſhould have all the Benefits and Privileges which the Copyholder himſelf ſhould have had, & Qui ſentit Commodum ſentire debet & Onus, and he is diſtrainable for the Rents and Services due and payable to the Lord, and the Charge lies upon the Land, and not upon the Cuſtom, and therefore the Cuſtom is good. Supplement to Co. Comp. Cop. 85. S. 19 cites Paſch. 17 Car. in B. R. Thorn v. Tyler.

Gilb. Treat of Ten. 310. cites S. C.

23. Copyholder of Inheritance made a *Letter of Attorney to* 2 &c. *to ſurrender his Copyhold Lands after his Death to certain Uſes*, according to the Cuſtom of the Manor &c. Adjudged, that this is a void Cuſtom, becauſe 'tis to convey Lands againſt the Rules of Law for conveying Copyholds, for that muſt be either by Surrender into the Hands of the Lord, or into the Hands of 2 Cuſtomary Tenants, to the Uſe of his Will, which muſt be executed in his Life-time. Nelſ. Abr. 506. pl. 10. cites Sty. 311. Hill. 1651. B. R. Wallis v. Bucknall.

24. Suppoſe that there was a *Cuſtom, that if the Houſe of a Copyholder falls, the Materials ſhall be the Tenant's*, Powell J. ask'd, if that could be good? 11 Mod. 94, 95. pl. 3. Mich. 5 Ann. B. R. Anon.

(A. e. 4) Cuſtoms unuſual, and interfering. Good or not.

1. THE Manor of Wadhurſt in the County of Suſſex *conſiſted of* 2 Sorts of Copyhold, viz. *Sock-Land and Bond-Land*, and by ſeveral Cuſtoms *diſſeverable in ſeveral Manners*; *As* if a Man be *firſt admitted to Sock-Land, and afterwards to Bond-Land*, aud dies ſeiſed of both, his Heir ſhall inherit both; *but if he be firſt* admitted *to Bond-Land, and afterwards to Sock-Land*, and of them dies ſeiſed, his youngeſt Son ſhall inherit, and if of both ſimul & ſemel, his eldeſt Son ſhall inherit; but if he dies ſeiſed of Bond-Land only, it ſhall deſcend to the Youngeſt; cited by Anderſon Ch. J. 1 Le. 56. pl. 70. Paſch. 29 Eliz. C. B. in Caſe of Kempe v. Carter.

(B. e) Where a Copyhold ſhall be ſaid in by Deſcent or Purchaſe.

1. IF the *Father purchaſes* [Copyhold] *and dies before Admiſſion*, his Heir ſhall be in by Purchaſe; per Nudigate J. 2 Sid. 38. Hill. 1657. Gilb. Teeat. of Ten. 271. cites S. C. and ſays, that according to this is Roll. [See Roll Deſcent (I) pl. 9]

2. But Ibid. 61. in S. C. Glyn Ch. J. held, that if a *Man, ſeiſed of Copyhold Land in Fee of the Cuſtom of Borough-Engliſh, ſurrenders according to the Cuſtom to the Uſe of J. S. and his Heirs, J. S. having Iſſue 2 Sons, dies before Admiſſion*; it ſeems that the youngeſt Son ſhall have the Land, becauſe he is in Deſcent, or at leaſt by Force of the firſt Surrender, and ſo in Nature of a Deſcent. Gilb. Treat. of Ten. 271, 272. cites S. C. & S. P. accordingly by Glyn, and ſays, that ſo are ſome other Opinions that are more late, and that therefore it was held, *if Land, of the Nature of Borough Engliſh, be ſurrendred to one and his Heirs, and he dies before Admittance*, that the *youngeſt Son ſhall be admitted*, and this Opinion ſeems to be very reaſonable, for Heirs were in the Limitation certainly as Words of Limitation, and not of Purchaſe; and certainly there is as much Reaſon to adjudge the Heir in by Deſcent here, as there is to adjudge an Heir in by Deſcent where a Recovery was had againſt the Anceſtor, but not executed until after his Death, becauſe the Uſe might have veſted during the Life of the Anceſtor, and becauſe the Execution hath a Retroſpect; and in Truth the Caſe of a Surrender is juſt the ſame; for Admittance might have been in the Life of an Anceſtor, and when it was had, it had a Retroſpect.

(C. e) Deſcent. How. And where there ſhall be Poſſeſſio Fratris.

1. A Copyholder in Fee had *Iſſue two Daughters by divers Women, and died ſeiſed*; the *Daughters entred and took the Profits many Years, and before Admittance the eldeſt Daughter died without Iſſue*, and afterwards the *youngeſt was admitted to the whole Land*, as ſole Heir to the Father. In this Caſe it was holden, that the Poſſeſſion of the eldeſt Daughter, though before Admittance, ſhould make her Siſter, though of the half Blood, inheritable to the Land. Supplement to Co. Comp. Cop. 71. S. 5. cites Dy. 291. 12 Eliz. The Remainder is in Conſideration of the Law, and the Eſtate of the firſt Siſter is not ſo determin'd, that any can take Advantage of it, for the Lord againſt this Leaſe by Deed indented cannot enter, or claim any thing, and the ſecond Siſter, although ſhe hath not agreed, yet ſhe cannot enter during the Life of her elder Siſter, for her Remainder takes Effect in Poſſeſſion after the Death of her ſaid Siſter; But if any ſhould take Advantage of it, it ſhould be the Lord, if his Deed indented did not ſtand againſt him; And afterwards Judgment was given againſt the younger Siſter. Clench J. was of another Opinion, viz. that the Entry of the younger Siſter, notwithſtanding that her elder Siſter was alive, was lawful; Quære of that. 2 Le. 73. pl. 97. Trin. 28 Eliz. B. R. Curtiſe v. Cottell.

2. If a Copyholder has Iſſue *a Son and a Daughter by one Venter, and a Son by another Venter, and dies*, and *a Guardian is admitted*, this is Poſſeſſio Fratris of the eldeſt Son to make the Brother [Siſter] Heir; *But if the Cuſtom be, that the Lord may, during the Nonage of the Heir, deviſe* [*demiſe*] *it by Copy to a Stranger*, this is not Poſſeſſio Fratris of the Eldeſt. Dal. 110. pl. 1. 16 Eliz. Anon.

3. *Husband*

4 Le. 38. pl 103. Mich. 17 Eliz. C. B. Anon. S. C. in totidem Verbis. —— 4 Le. 212. pl 344. Mich. 20 Eliz. C. B. S. C. in totidem Verbis. —— If the *Leaſe for Years determines, and the elder Brother dies before Entry*, the younger Brother ſhall inherit; for when he has once got Poſſeſſion, which he had by the Poſſeſſion of his Leſſee for Years, then it ſeems he has made the Eſtate deſcendible to him and his Heirs. Gilb. Treat. of Ten. 150. cites Supplement to Co. Comp. Cop. 114. —— But perhaps it will be ſaid, that the Poſſeſſion of the Leſſee for Years is only the Poſſeſſion in Law of the Brother, and not in Fact, becauſe he can get no Poſſeſſion, and it would be inconvenient to carry the Eſtate to another Family, if the elder Brother die before Entry, but when this Eſtate for Years is ended, then ſince he may get a Poſſeſſion by Entry, it is required by Law; But then on the other Hand, if by the Poſſeſſion of the Leſſee for Years, he had no Eſtate deſcendible to him and his Heirs, how comes this Eſtate to be deveſted by the Expiration of the Leaſe for Years? It is urged on the other Hand, that Poſſeſſion was but feigned, and is now gone; but yet, if the Brother were once in Poſſeſſion, and then were diſſeiſed, it ſeems the Siſter ſhould inherit, tho' the Poſſeſſion of the elder Brother were gone; but the *Poſſeſſion of the Leſſee was the Brother's Poſſeſſion only, by Suppoſition of Law, to help him out where he could get no Poſſeſſion, and therefore when that Eſtate for Years is gone, the Law removes the Aſſiſtance it gave before, becauſe now he may get Poſſeſſion*, and ſo ſets the Matter between the Brothers, as it would if there had been no Leaſe for Years. Ideo Quære de hoc. Gilb. Treat. of Ten. 150, 151.

3. *Husband and Wife, ſeiſed in the Right of his* Wife of certain cuſtomary Lands in Fee; he and his Wife *by Licence* of the Lord *make a Leaſe for Years* by Indenture, rendring Rent, having *Iſſue two Daughters*; the *Husband dieth*; the *Wife takes another Husband, and they have Iſſue a Son and a Daughter*; the Husband and Wife die; *the Son is admitted to the Reverſion, and dieth without Iſſue.* It was holden by Manwood, that this *Reverſion ſhall deſcend to all the Daughters*, notwithſtanding the Half-Blood; for the Eſtate for Years which is made by Indenture by Licence of the Lord is a Demiſe and Leaſe, according to the Order of the Common Law, and according to the Nature of the Demiſe, the Poſſeſſion ſhall be adjudged, which Poſſeſſion cannot be ſaid Poſſeſſion of the Copyholder, for his Poſſeſſion is Cuſtomary, and the other is meer contrary, therefore the Poſſeſſion of the one ſhall not be ſaid the Poſſeſſion of the other, and therefore there is no Poſſeſſio Fratris in this Caſe; But if he had been *Guardian by the Cuſtom*, or this *Leaſe had been made by Surrender*, there the Siſter of the Half-Blood ſhould not inherit; and Mead ſaid, that the Caſe of the Guardian had been ſo adjudged; Mounſon to the ſame Intent; and if the Copyhold deſcend to the Son, he is not Copyholder before Admittance, but he may take the Profits, and puniſh Treſpaſs &c. 3 Le. 69, 70. pl. 106. Mich. 20 Eliz. C. B. Anon.

Mo. 272. in pl. 425. Fenner ſaid, that Poſſeſſio Fratris by Entry before Admittance had been allow'd and adjudged in a Caſe in 23 Eliz. in C. B. argued much between Alderman Dixey and others. ——— D. 291. b. Marg. pl. 69. cites 23 Eliz. Rot. 1229 **Holmes v. Heynel**, adjudged that the Poſſeſſion of a Termor ſhall be the Poſſeſſion of the Brother without any Admittance; For the Seiſin given to his Anceſtors ſuffices for him and all his Heirs, but he is not Tenant to the Lord till he is admitted. ——— 4 Rep. 21. a pl. 1. Mich. 23 & 24 Eliz. C. B. Brown's Caſe, S. P and ſeems to be S. C. and reſolv'd. — Ibid. 22. b. the third Reſolution, that where the cuſtomary Eſtate of Inheritance deſcends to the Heir, he may enter and take the Profits before Admittance, and that there ſhall be Poſſeſſio Fratris before Admittance upon actual Poſſeſſion, as in the Caſe at Bar, [where the Father had made a Leaſe for Years, as in the principal Caſe.] ——— But in a like Caſe, where the Son was admitted to the Reverſion, and died without Iſſue, Manwood held, that this Reverſion ſhall deſcend to all the Daughters, notwithſtanding the Half-Blood; For the Eſtate for Years, which is made by Indenture by Licence, is a Demiſe and Leaſe, according to the Order of the Common Law, and the Poſſeſſion ſhall be adjudged accordingly, which Poſſeſſion cannot be ſaid the Poſſeſſion of the Copyholder;

4. A Copyholder of Inheritance of the Manor of Fulham had Iſſue a Son and a Daughter by one Venter, and a Daughter by another Venter, and died, his Son being an Infant of two Months old, and the *Copyhold in Leaſe by Licence for 12 Years, rendring Rent*; the Death of the Copyholder was preſented, in the Infancy of his *Son and Heir*; afterwards, *(before any Rent-Day incurr'd, and any Admittance or Guardian aſſigned)* the *Son died*; and the Queſtion was, whether his Siſter of the whole Blood ſhall inherit; and adjudged, that the eldeſt Siſter only is Heir, and that the Deſcent of the Reverſion, upon the Leaſe for Years, and before Day of Payment of the Rent, is Poſſeſſio Fratris, quæ facit ſororem eſſe Hæredem. Moor 125. pl. 272. Trin. 23 Eliz. Rot. 1229. Anon.

pyholder; For his Poſſeſſion is cuſtomary, and the other is meer contrary, and ſo the Poſſeſſion of the one, ſhall not be ſaid the Poſſeſſion of the other, and therefore there is no Poſſeſſio Fratris in this Caſe; But if he had been Guardian by the Cuſtom, or this Leaſe had been made by Surrender, there the Siſter of the Half-Blood ſhould not inherit, and Mead ſaid, that the Caſe of the Guardian had been ſo adjudged; And Mounſon to the ſame Intent; And if the Copyhold deſcends to the Son, he is not Copyholder before Admittance, but he make take the Profits, and puniſh Treſpaſs &c. 3 Le. 69, 70. pl. 106. Mich. 20 Eliz. C. B. Anon ——4 Le. 38. pl. 103. S. C. in totidem Verbis.——Ibid. 212. pl. 343. Paſch. 17 Eliz. C. B. S. C. in totidem Verbis; ſed adjornatur.

5. If A. be *ſeiſed of Copyhold Land on the Part of his Father, and of other Copyhold Land on the Part of his Mother*, and thereof dieth ſeiſed, and his *Son and Heir be admitted to it by one Copy, and by one Admittance*, now *if that Son dieth without Iſſue the Copyholds ſhall deſcend ſeverally*, the one to the Heir on the Part of his Father, and the other to the Heir on the Part of his Mother &c. per Clench J. 3 Le. 109. pl. 158. Trin. 26 Eliz. B. R. in Caſe of Taverner v. Cromwell.

6. If a *Copyholder in Tail have Iſſue a Son and a Daughter by one Venter, and a Son by another Venter, and dies*, and the *Son by the firſt Venter enters, and dies*, the *Son of the 2d Venter ſhall inherit*. Co. Comp. Cop. 59. S. 50.

7. If a Copyholder in Fee-ſimple have Iſſue a *Son and a Daughter by one Venter, and a Son by another Venter*, and dies, and the *Son by the firſt Venter enters and dies*, the Land ſhall deſcend to the Daughter; Quia Poſſeſſio Fratris de Feodo ſimplici facit ſororem eſſe Hæredem. Co. Comp. Cop. 59. S. 50.

8. If there be *three Brothers*, and the *middle Brother purchaſes a Copyhold in Fee, and dies without Iſſue*, the *Eldeſt ſhall inherit*, becauſe the Worthieſt of the Blood. Co. Comp. Cop. 59. S. 50.

10. If a Man have Iſſue a *Son and a Daughter by one Venter, and a Son by another* Venter, the *eldeſt Son purchaſes a Copyhold in Fee, and dies without Iſſue*, the Daughter ſhall have the Land, not the younger Son, becauſe he is but of the Half-Blood to the other. Co. Comp. Cop. 59. S. 50.

11. If a *Man has a Copyhold by Deſcent on his Mother's Side*, if he die without Iſſue, the Lands *ſhall go to the Heirs of the Mother's Side, and ſhall rather eſcheat than go to the Heirs of the Father's Side; But if I purchaſe* a Copyhold, *and die without Iſſue*, the *Land ſhall go to the Heirs of my Father's Side; but if I have no Heirs of my Father's Side, it ſhall go to the Heirs of my Mother's Side*, rather than eſcheat. Co. Comp. Cop. 59. S. 50.

12. If there be *Father, Uncle, and Son*, and the *Son purchaſes a Copyhold in Fee*, and *dies without Iſſue*, the Eldeſt ſhall inherit, and not the Father, becauſe an Inheritance may lineally deſcend, but not aſcend. Co. Comp. Cop. 59. S. 50.

13. If there be *two Copartners, or two Tenants in Common* of a Copyhold, and *one dies, having Iſſue*, the *Iſſue ſhall inherit*, and not the other, by the Survivorſhip; But *otherwiſe* it is *of two Jointenants*. Co. Comp. Cop. 59. S. 50.

14. Cuſtom was, that after the Father's Death, if there was no Son, the eldeſt Daughter ſhould have the Lands for Life only, and then the Lands ſhould *remain to the next* Heir Male that can derive by the Males; and alſo, that the Wife ſhould hold for her Life, Tenant dies, and leaves two Daughters. Wife enters. Eldeſt Daughter dies. Adjudged that the *youngeſt Daughter* ſhall have the Lands within the Cuſtom, for though ſhe was not eldeſt at the Death of her Father, yet ſhe *was eldeſt at the Death of her Mother*, and her Eſtate was a Continuance of the Eſtate of the Baron till her Death, as in the Caſe of Frank-Bank. Lev. 172. Trin 17 Car. 2. B. R. Newton v. Shaſto. Sid. 267. pl. 18. S. C. adjudged.

Mod. 102. pl. 8. S. C. but not clearly S. P. —Ibid. 120. pl. 22. S. C. & S. P. adjudged accordingly.

15. The Father being ſeiſed of a Copyhold, had *Iſſue three Daughters by his firſt Wife, and two Daughters and a Son by his ſecond Wife*, and *ſurrendred to his three Daughters for eleven Years, Remainder to his two Daughters for five Years, Remainder to his three Daughters by the firſt Wife, Remainder to his own right Heirs*; The Father died; The *three Daughters were admitted*; The *Son died*; *After which the eleven Years expired*; Adjudged, that the Admittance of the three Daughters was the Admittance of the Son in Remainder as Right Heir, and ſo an actual Seiſin in him which made a Poſſeſſio Fratris, by which the Copyhold deſcended to his two Siſters of the whole Blood to him, and not to all his Siſters, as Heirs to their Father. 2 Lev. 107. Trin. 26 Car. 2. B. R. Blackburn v. Greaves.

16. W. R. was ſeiſed of Copyhold Lands that were *deſcendible ſecundum Gavelkind, and the Wife endowable of a Moiety*. W. has *Iſſue H. by one Venter, and J. and E. by another Venter; W dies*, the *Wife enters into a Moiety; the two Sons enter into the other Moiety, and were admitted to the Reverſion of the Wife's Moiety; J. the Son by the ſecond Venter dies*; The *Wife dies*. The Queſtion was, whether this Admittance to the Reverſion ſhall ſo attach it in the Brother, as that the Siſter ſhall have it before the Half-Brother; and it was argued, that ſhe ſhall not; for it is found, that after the Death of the Father the Mother entred, and ſo the Son was never ſeiſed, ſo that this Caſe is ſtronger than the Caſe 1 Init. 31. a. where the Son enters, and endows the Mother, and yet that ſhall ſo defeat his Poſſeſſion, that there ſhall be no Poſſeſſio Fratris. To which it was anſwered, that it being found that the Son was admitted, it ſhall be intended according to the Cuſtom, and then the Eſtate ſhall be guided by the Cuſtom, and not by the Rules of Common Law; and he cited two Caſes, where the attaching of a Reverſion upon an Eſtate for Life doth ſeem to be a ſufficient Seiſin to convey the Land to the Heir of him in whom the Reverſion was ſo attached, viz. 1 Cro. 411. Roll Tit. Deſcent, 623. Godfrey v. Bullan. Vaughan ſaid, all Cuſtoms are contrary to the Common Law, and therefore ſhall be taken ſtrictly, and here is *no Cuſtom that a Reverſion ſhall deſcend in Gavelkind*; And Atkins Juſtice ſaid, that in thoſe Caſes cited for the Daughter, there was no Maxim of the Common Law, as here is, viz. Poſſeſſio Fratris &c. and then he that takes Advantage of it muſt be qualified, according to the Common Law. Judgment againſt the Daughter Def' niſi Cauſa. Freem. Rep. 45, 46. pl. 55. Trin. 1672. Foxe v. Smith.

17. Since by Cuſtom an Eſtate at Will is deſcendible, the Deſcent is ordered and governed by the Rules of the Common Law; For *thoſe Reaſons, that govern the Deſcents at Common Law, are drawn from the Nature of Deſcent and Diſpoſition of Eſtates after the Owner's Death, and are grounded upon thoſe Reaſons that ſeem to warrant ſuch a Diſpoſition of the Eſtate, and are not taken from the Nature of the Land or Thing that is diſpoſed of, and therefore may as well, and with as good Reaſon, be applied to the Diſpoſition of a Copyhold, as Freehold Eſtates*, ſince it is not the Nature of the Thing diſpoſed of, that is to rule or govern either in one Caſe or in the other; And therefore where a * Copyholder by Licence made a Leaſe for Years, and the Leſſee entred, and the Leſſor died, having Iſſue a Son and a Daughter by one Venter, and a Son by another, then the eldeſt Son dies, it was adjudged that the Daughter of the whole Blood ſhould inherit, becauſe the Poſſeſſion of the Leſſee for Years was the Poſſeſſion of the elder Brother, who may have Poſſeſſion before Admittance, for in that Caſe he was not admitted; for if it be reaſonable in ſuch Caſe at Common Law to keep the Inheritance out of the Half-Blood, ſo it is in Copyhold Eſtates; but if the Brother do not get Poſſeſſion, the Siſter cannot inherit, for then he hath only a

Right

Right to the Lands as Repreſentative of his Father, which Right ſhe is not capable of having, becauſe ſhe is not Repreſentative of the Father; But when he has gotten Poſſeſſion, he hath then an Eſtate in the Lands deſcendible to him and his Heirs, and the Siſter is his Heir, and though he has the Lands as Repreſentative of his Father, yet he hath them to him and his own Repreſentatives; But when he never got Poſſeſſion, he never executed the Power he had of taking the Lands to him and his Repreſentative, ſo that this Power devolves upon the younger Son as Repreſentative of his Father, for the Law gives the Eſtate to him and his Repreſentative, who is Repreſentative of the dead Perſon. Now when he that is Repreſentative to the dead Perſon, doth not get actual Poſſeſſion, and ſo veſt the Eſtate in him and his Heirs, he hath no Power over the Lands, and therefore can make no Leaſe or Diſpoſition of them by Feoffment, becauſe though he hath a Right to be abſolute Owner of the Lands, yet is he not actually ſo till Entry, becauſe till then in Fact he hath no Poſſeſſion, and therefore there is no Reaſon by a Fiction of Law to create him a Poſſeſſion; and ſo he never having had the Lands to him and his Repreſentative, he muſt take who is Repreſentative to the dead Perſon, which is the younger Brother, and this alſo may be a Reaſon why he that claims by Deſcent, muſt make himſelf Heir to him that was laſt actually ſeiſed of the Freehold. Gilb. Treat. of Ten. 147, 148, 149.

(D. e) Diſſeiſin. What is.

1. NOTE, it was holden by the Court, that *if a Copyholder in Fee dieth ſeiſed, and the Lord admits a Stranger* to the Land, *who entreth*, that *he is but a Tenant at Will, and not a Diſſeiſor to* to the Copyholder, who hath the Land by Deſcent, becauſe he cometh in by the Aſſent of the Lord &c. 3 Le. 210. pl. 274. Trin. 30 Eliz. in B. R. Anon.

2. A *Leaſe for Years by a Copyholder* * [*without Licence*] although it be a Forfeiture, yet it is no Diſſeiſin to the Lord; Agreed per Cur. Noy 92. Trin. 2 Car. B. R. Aſhfield v. Aſhfield. * Lat. 199. S. C. & S. P. agreed.

(E. e) Dower. In what Caſes the Feme ſhall have Dower. And how recovered.

1. THE Cuſtom of a Manor was, that the Lord, or his Steward, or Deputy, might demiſe; the *Lord took a Wife, and by his laſt Will in Writing gave Authority to certain Perſons to make Leaſes, according to the Cuſtom of the Manor, to raiſe Fines for Payment of his Debts*, and died; *they held Court in their own Names, and granted Copies in Reverſion*, according to the Cuſtom; afterwards the *Widow of the Lord recovered a 3d Part of the Manor in Dower*, and *one of the Copyhold Eſtates, whereof the Reverſion was granted, was aſſigned to her by the Sheriff*

Sheriff together with other Lands, by Writ &c. The Court held, that ſhe ſhould avoid the Grant made by the Perſons aſſigned by the Will. D. 251. pl. 89. Hill. 8 Eliz, Anon.

Supplement to Co. Comp. Cop. 79. S. 13. cites S. C. reſolved. —— 8 Rep. 63. b. S. cited per Cur. as adjudged and affirm'd for good Law per tot. Cur.

2. If the Lord of a Manor where Cuſtomary Tenements are *demiſed, and demiſable* by Copy &c. according to the Cuſtom of the ſaid Manor, *for one two or three Lives*, grants a Copyhold for three Lives, and *takes a Wife*, and *the three Lives end*, and the *Lord enters and keeps the Land for a Time in his own Hands and afterwards grants them over again by Copy, and dies*, the Copyholder ſhall hold the Land diſcharged of Dower of the Lords Widow; Per Wray, who ſaid, that this is a clear Caſe; For the Copyholder is in by the Cuſtom, which is Paramount the Title of Dower and Seiſin of the Husband; And Judgment accordingly. Le 16. pl. 19. Paſch 26 Eliz. B. R. Cham v. Dover.

She being in of her *Widows Eſtate* ſhall not avoid the Leaſe

3. If a *Feme be endowable of a Copyhold by Cuſtom*, it was the Opinion of the Juſtices that a Leaſe made by the Baron by the Cuſtom after the Eſpouſals, ſhall precede the Dower, and the Dower ſhan't avoid it. Mo. 758. pl. 1047. Trin. 2 Jac. Holder v. Farley.

without an *eſpecial Cuſtom*; for the Leſſee comes under the Cuſtom, and by the Lord's Licence as well as the Feme. Cro. J. 36. pl. 13. Farleys Caſe, S. C. ——Gilb. Treat. of Ten 303. cites S. C. but ſays, that if the Leaſe was made without Warrant ſhe may avoid it; And that it ſeems to him, that the Feme ſhall not in this Caſe be endowed of the 3d Part of the Rent and Reverſion, becauſe Cuſtoms ought to be ſtrictly purſued, and that is only to be endowed of Land; Yet it ſeems after the Leaſe ended ſhe ſhall be endowed, for the Husband did die ſeiſed (the Poſſeſſion of his Leſſee being his own Poſſeſſion) but it was agreed in this Caſe, that by ſpecial Cuſtom the Feme might avoid the Leaſe. This, among other Caſes, proves that a Copyholder may diſpoſe of his Land, and bar his Wife of her Free-Bench, unleſs there be a particular Cuſtom that he ſhall avoid any Alienation &c. made by him, for then the particular Cuſtom ſhall, as it ſeems, avoid his Charge, as well in the Caſe of Copyhold, as Freehold Eſtates, by the Common Law.

Lev. 154. S. C. is a Different Point. —— Sed. 76. pl. 9. S. C. but not S. P. —— 2 Sid. 1. S. C. but not reſolv'd. ——Ibid.

4 The Cuſtom of a Manor was for the Widow to be *endow'd of a Moiety* of the Copyholds of which her Husband dy'd ſeiſed; The Husband died ſeiſed of 100 l. per Annum and his Wife was endow'd of 50 l. per Annum and the 50 l. per Annum deſcended to his Heir, who afterwards dy'd, leaving a Widow. This *Second Widow ſhall be endow'd of a Moiety of the Moiety*, and ſo ſhall have 25 l. per Annum; Adjudg'd. Raym. 58. Mich. 14 Car. 2. B. R. Baker v. Berisford.

9. S. C. Glyn Ch. J. held that the ſecond Widow was intitled to a Moiety.

5. An *Ejectment* will not lie for a third Part of a Copyhold Tenement in Nature of Dower, for they ought to levy a *Plaint in Nature of a Writ of Dower in the Manor Court*, and the Homage to ſever, and ſet out the ſame; But if the Cuſtom had been for the Widow to have the third Part not in Nature of Dower, but in Common with the Heir, it were then otherwiſe; Ruled per Pemberton Ch. J. at the Aſſiſes. 2 Show. 184. pl. 188. Hill. 33 & 34 Car. 2. B. R. Chapman v. Sharpe.

(F. e) Entails by *the Statute De Donis* &c.

1. NOTE, it was ſaid for Law that Tail may be of a Copyhold, and that *Formedon* may lie of it in *Deſcender by Proteſtation in Nature of Writ of Formedon in Deſcender at Common Law*, and good per Omnes Juſticiarios; For though Formedon in Deſcender was only given by Statute, yet now this Writ lies at the Common Law, and *it ſhall be intended that this has been a Cuſtom there Time out of Mind* &c. and the Demandant ſhall recover, by Adviſe of all the Juſtices. Br. Tenant per Copie, pl. 24. cites 15 H. 8.———And the like Matter in Eſſex M. 26 H. 8. and Fitzherbert affirmed this after in Camera Ducat' Lancaſt' & concordat Littleton in his Chapter of Tenants by Copy of Court Roll. Ibid.

2. The Court were clear in Opinion that a Copyhold could *not* be *entailed without* ſuch *a Cuſtom* to entail it. Mo. 188. pl. 336. Trin. 27 Eliz. B. R. Hill v. Morſe.

3. A *Surrender* by Tenant in Tail is no Diſcontinuance unleſs the *Cuſtom* is ſo, and tho' it was moved that there can be no Eſtate Tail of a Copyhold except it be *ſhewn that the Lands had been given ſo, and always enjoyed by the Remainder-men and Reverſioners, and that their Alienations did not uſe to bind* &c. for otherwiſe it ſhall be intended a Fee, yet the Court held the contrary, that it ſhall be intended an Eſtate Tail, and ſo always uſed. Cro. E. 148. pl. 17. Mich. 31 & 32 Eliz. B. R. Bullen v. Crant.

Le. 174, 175. pl. 244. S. C. & S. P. held by Wray accordingly. —— Supplement to Co. Comp. Cop. 77. S. 11. cites S. C. held by Wray that it was an Eſtate Tail, and not a Fee conditional, and that Cuſtomary Lands may be granted in Tail.

4. Per Gaudy and Clench J. an Eſtate cannot be of a Copyhold *by the Statute*, but may *by Uſe and Cuſtom*, but per Popham and Fenner J. contra, that there may be an Eſtate Tail by the Statute, per Equitatem Rationis, but it cannot be by Cuſtom. Cro. E. 307. pl 9. Mich 35 & 39 Eliz. B. R. Gravenor v. Rake.

Popham &c. 33. Gravenor v. Brook S. C.—— 4 Rep. 23. a pl. 5. Gravenor v. Dod S. C. adjudg'd that whether it be Fee ſimple Conditional or Eſtate Tail it is within the Cuſtom.——If it is not an Eſtate Tail it is a *conditional Fee*, and ſo it was agreed by us all, in the Caſe of Gravenor v. Rake, per Cur. Cro. E. 373. pl. 20. Hill. 37 Eliz. B. R. in Caſe of Stanton v. Barnes——Copyhold may be entailed by Equity of W. 2. without Cuſtom, and is not entail'd by Cuſtom. Mo. 538. pl 488. adjudg'd Dell v. Higden.——Upon a ſpecial Verdict the Queſtion was, whether a Copyhold could be entailed *without laying a ſpecial Cuſtom* for ſo doing, and adjudg'd, per tot. Cur. that it might, and Holt Ch. J. rejected the Notion of Lord Coke about the *Statute de Donis cooperating with the Cuſtom*, and held that the Statute *turns all* thoſe Eſtates which at Common Law were Fee-Simple conditional *into Eſtates Tail*. 11 Mod. 199. pl. 17. Mich. 7 Ann. B. R. Adams v. Hinclow.

5. The *Cuſtom* of a Manor is, *that a Copyhold Eſtate may be granted in Fee-ſimple*; in that Caſe it was adjudged, that *an Eſtate thereof granted to one and the Heirs of his Body is good, and within the Cuſtom*; for Ubi licet quod eſt Majus, non debet quod eſt Minus non licere. Supplement to Co. Comp. Cop. 81. S. 16. cites 4 Rep. 36 Eliz. Gravenor v. Tedd.

Poph. 33. Gravenor v. Brooke & al' S. C adjudged accordingly.

6. When a Copyholder in Fee makes a Gift in Tail with Remainder over in Tail, *no Reverſion is left in him, but only a Poſſibility*, and the *Lord ought to avow upon the Donee*, and not upon the Donor; and there is a Difference when he makes or gives an Eſtate of Inheritance, and when he makes an Eſtate for Life or Years; for in the one Caſe he has

And that if they were within the Statute W. 2. the Lord [illegible]

ter for Felony, but the Donor and the Services ſhould be done to the Donor, and

a Reverſion, but not in the other. 2dly, A *Recovery without a ſpecial Cuſtom* ſhall not be, as was agreed in the Caſe of the Manor of Stepney, becauſe the Warranty cannot be knit to ſuch an Eſtate without a Cuſtom, per Harvey J. Godb. 368. cites it as adjudged in the C. B. 17 Eliz. in Caſe of Lane v. Hill.

not to the Lord of the Manor; Per Harvey J. Ibid. cites Paſch. 35 Eliz. C. B. Pit v. Hockley. ——Supplement to Co. Comp. Cop. 77. S. 11. cites S. C. but ſays the contrary was reſolv'd, in Caſe of Borneford v. Sir John Packington.

Supplement to Co Comp. Cop. 86. S. 21. cites S. C.

7. W. W. being ſeiſed of a Copyhold of Inheritance, *ſurrendered it to the Uſe of his laſt Will, and having a Daughter then born, and his Wife being with Child, he deviſed Part of his Lands to the Child in Ventre ſa mere, & Hæredibus ſuis legitime Procreatis, the Reſidue to his Daughter born, and to the Fruit of her Body, and if ſhe die without Fruit of her Body, then to remain to the Child in Ventre ſa mere* &c. *and will'd that one ſhould be Heir to the other*; afterwards the *Wife was delivered of a Daughter* &c. All the Court agreed, that this was an Eſtate-Tail in the after-born Daughter, for the Words Hæredibus ſuis &c. and that one ſhould be Heir to the other, makes it an Eſtate-Tail without the Word (Body) in a Will. Mo. 637. pl. 877. Hill. 37 Eliz. Church v. Wyat.

S. C. cited per Cur. Godb. 368. pl. 458. Mich. 2 Car. C. B. ——S. C. cited Gilb. Treat. of Ten. 155. and 159.

8. In Ejectment for Copyhold Lands held of the Manor of Thiſleworth, it was reſolv'd by all the Juſtices, that *there cannot be an Eſtate Tail* of ſuch Lands, *unleſs there is a ſpecial Cuſtom* within the Manor to Warrant it. Cro. E. 717. pl. 43. Mich. 41 & 42 Eliz. C. B. Eriſh. v. Reeves.

Gilb Treat. of Ten. 158, 159. cites S. C. where it is doubted, whether a Copyhold may be entailed no Cuſtom being found one way or the other; by which it ſeems plain, that *if there had been a Cuſtom found, there had been no Queſtion*, that it might have been intailed; But then there is the Caſe of **Eriſh v. Rives** that an Entail may be of a Copyhold by Cuſtom, but not without it; there are ſeveral other Caſes Warrant the ſame Diſtinction, as Cro. E. 307. Gravenor v. Rake. and 149. Hedd v. Chalener 1 Le. 175. Bulleyn v. Graunt. Poph. 128. Rawlinſon v. Green. 1 Sid 268. 314. Newton v. Shaftee. Mo. 637. Church v. Wyat.

9. A. Copyholder in Fee ſurrendred to the Uſe of one in Tail with diverſe Remainders over, who was admitted, and afterwards ſurrendred to the Uſe of another in Fee, againſt whom a Recovery was had in the Copyhold Court, who vouched the Common Vouchee; Queſtion, 1ſt *Whether Intail might be of a Copyhold, there being no Cuſtom found?* 2dly, *Admitting that; whether a Surrender by itſelf be a Diſcontinuance?* 3dly, *If there may be a Common Recovery of a Copyhold to bar the Tail, and thoſe in Remainder?* not reſolved. Cro. E. 907. pl. 18. Mich. 44 & 45 Eliz. B. R. Barry v. Sanderſon.

10. 36 Eliz. in the King's Bench, it was adjudged, that *where the Cuſtom* of a Manor *was, that Lands might be granted* unto any *in Fee-ſimple*, in ſuch Caſe *a Grant of Lands unto a Man and the Heirs of his Body was within the Cuſtom*; For a Cuſtom which extendeth to the greater will extend to the leſſer Eſtate. Supplement to Co. Comp. Cop. 77. S. 12.

11. *Whether Copyhold Lands are within the Statute Weſtm. 2. cap. 1. De Donis*, &c. *or may be entailed, hath been much controverted*, and many Judgments and Reſolutions have been on both Sides, and it ſeemeth to be a Point not fully agreed upon at this Day; I ſhall therefore make ſome little Mention what hath been ſaid on either Side, and leave it to the Judgement of others; And firſt for the affirmative Part, that Copyholds are within the ſaid Statute and may be intailed, I ſhall begin with Mr. Littleton himſelf; Tenant by Copy of Court-Roll

is

is, ſaith he, where there is a Cuſtom of a Manor Time out of Mind uſed, that certain Tenants within the ſaid Manor have uſed to have Lands and Tenements to them and their Heirs in Fee-Simple or in Fee-Tail, and in that Chapter he particularly ſets forth the Manner of Grants of ſuch Eſtates, viz. Ad hanc Curiam venit A. de B. & ſurſum-reddidit in Manus Domini &c. unum Meſuagium &c. ad Uſum C. & D. & Hæredum ſuorum, vel Hæredum de Corpore ſuo exeunt' Habendum ſibi & Hæredibus de Corpore ſuo exeunt' &c. by which it appeareth to be the Opinion of Littleton, that an Eſtate-Tail may and might be of Copyhold Lands, and herewith agreeth the Opinion of Mr. Plowden, in his Commentaries in Morgan and Manxell's Caſe; But Note, that the Opinion of Mr. Littleton is, that there muſt be a Cuſtom of the Manor to enable ſuch Eſtates of Copyhold Lands. Supplement to Co. Comp. Cop. 76, 77. S. 12.

12. It is ſaid in 3 Rep. in **Heydon's Caſe**, that where an Act of Parliament doth alter the Service, Tenure, or Intereſt of the Eſtate, either in Prejudice of the Lord or of the Cuſtom of the Manor, or in Prejudice of the Tenants, there ſuch an Act of Parliament doth not extend to Copyholds, and therefore the Statute of Weſtm. 2 De Donis, becauſe it extendeth to the Alteration of the Service and Tenure of the Land, and is prejudicial to the Lord of the Manor, doth not extend to Copyholds; But in that Caſe it is agreed, that *by a ſpecial Cuſtom* Lands might be entailed, for that it might be, that upon the Creation of the Manors, Lands were given by Lords of Manors, to hold by their Tenants by particular Services, and for particular Uſes &c. to ſome, to them, and their Heirs in Fee-ſimple, to ſome others, to hold to them and the Heirs of their Bodies begotten, and to ſome others for particular Eſtates, as for Life &c. and ſuch Eſtates having continued in their Iſſues Time out of Mind, Cuſtom hath now enabled ſuch Eſtates to be of Copyholds in Tail; And altho' they have and enjoy ſuch their Eſtates, be it either Fee-ſimple or Fee-Tail, yet it is but ſecundum Conſuetudinem Manerii, and therefore and for theſe Reaſons and Cauſes, *altho' that Copyhold be not, or could not be entailed within the general Words of the Statute de Donis &c. yet by Cuſtom Time out of Mind uſed, they ſay that Copyholds may be entailed.* Supplement to Co. Comp. Cop. 77. S. 12.

13. A *Cuſtom*, within a Manor Time out of Mind of Man uſed, *was to grant* certain Land, Parcel of the ſaid Manor *in Fee-ſimple, and never any Grant was made to any and the Heirs of his Body for Life, or for Years*; and the *Lord of the ſaid Manor did grant to one by Copy for Life, the Remainder over to another, and the Heirs of his Body*; And it was adjudged, that the Grant and Remainder over was good, for the Lord having Authority by Cuſtom, and an Intereſt withal, might grant any leſſer, Omne majus continet in ſe Minus; But he that hath but a bare Authority, as he that hath a Warrant of Attorney, muſt purſue his Authority, (as hath been ſaid) and if he do leſs it is void. Co. Litt. 52. b.

Supplement to Co. Comp. Cop. 81. S. 16. cites S. C. accordingly. ——Cro. E. 373. pl. 20. Hill. 37 Eliz. B. R. Stanton v. Barnes; The *Cuſtom was to grant it in Fee or for Life Solummodo ea capienti extra Manus Domini*; a Surrender was to the Uſe of one for Life, Remainder in Tail, Remainder in Fee; It was objected, that this was not good to him in the Remainder in Tail, the Cuſtom being found expreſsly, that it ſhall be Solummodo ea capienti extra Manus Domini; it ought to be an immediate taking, and he ſhall not take by way of Remainder; alſo the Cuſtom will not warrant any Eſtate for Life or in Fee; but the Court reſolved to the contrary, that it is good enough; For in that it is limited to one, and the Heirs of his Body, it is not void; but if it be an Eſtate Tail, it is a conditional Fee, and ſo it was agreed by us all in the Caſe of **Gravenor v. Rake**; For when a Cuſtom warrants the Greater, it ſhall warrant the Leſſer alſo; to the 2d, it may be well limited by way of Remainder, as well as to the immediate Taker; for when the Cuſtom warrants it, it cannot reſtrain a Fee to be limited as well by way of Remainder as otherwiſe, and he in Remainder and the particular Tenant make but one Eſtate, and in that it is found that the Cuſtom is, that it ſhall be granted Solummodo ea capienti, it is void therein, wherefore it was adjudged accordingly for the Plaintiff.

14. In

Supplement to Co. Comp. Cop. 77. S. 11. cites S. C.

14. In Ejectment the Caſe was, that *Tenant in Tail* of a Copyhold *ſurrendred the ſame into the Hands of the Lord, to the Uſe of J. S.* Doderidge J. ſaid it had been a great *Doubt, whether it may be intailed*, but the common and better Opinion was, that by *the Statute De Donis Co-operating with the Cuſtom it may be*, and with this agrees **Heydon's Caſe**, and ſo was the Opinion of the Court, Poph. 128. Mich. 5. Jac. B. R. Lee v. Brown.

Cro C. 42. pl. 4. Rowden v. Malſter, S. C. adjudged by 3 Juſtices, contra Yelverton. ——2 Roll Rep. 383. Mich. 21 Jac. C. B. the S. C. adjornatur. ——Supplement to Co. Comp. Cop. 77. S. 12. S C. —— S. C. cited by Glynn Ch J. 2 Sid. 73, 74.

15. Copyholds are *not within the Statute De Donis*, which ſpeaks only *De Tenementis per Chartam datis &c.* nor are they within the Meaning of it, 1ſt Becauſe they were not until 7 E. 4. 19. of any Account in Law, they being but Eſtates at Will. 2dly. The Statute of W. 2. provides only againſt thoſe who might *make Diſheriſin by Fine or Feoffment*, which Copyholders could not do. 3dly. Becauſe if Copyholders might give Lands in Tail by the Statute, then *the Reverſion ſhould be left in themſelves*, which cannot be. 4thly. The Makers of the Statute intended nothing to be within the Statute *of which a Fine could not be levied*, for it provides Quod Finis ipſo Jure ſit nullus. 5thly. Great Miſchiefs might follow if Copyholds ſhould be within the Statute W. 2. becauſe there is *no Means to dock the Eſtate*, and no cuſtomary Conveyance can extend to a Copyhold created at this Day. Adjudged. Godb. 367. pl. 458. Mich. 2 Car. C. B. Royden v. Malſter.

—— It is made an *Objection againſt entailing Copyhold Lands*, that thereby the Donee muſt hold of the Donor, and the Donor being in the Reverſion, muſt hold of the Lord, and ſo the Change of Tenants will not be ſo often, and if the Donee commit any Forfeiture, the Donor muſt take Advantage of it, which would be to the Prejudice of the Lord to have the Tenure thus alter'd; to this Objection I think it may be very well Anſwered, that the Truth of the Caſe is not ſo, for the *Donee in Tail doth not hold of Donor, but of the Lord*, as it ſeems every Tenant for Life doth of a Copyhold, and this ſeems to be very reaſonable; for a Copyhold in Fee ſimple is not like other Eſtates in Fee-ſimple at Common Law, but they are only Eſtates at Will, and ſo he that is the Actual Tenant at Will is Tenant to the Lord; for it ſeems to me, that becauſe they are but Eſtates at Will, there is a Diviſion of Eſtates, but he that is actual Tenant at Will, hath all the Eſtate, and there is no Part or Parcel of the Eſtate left in any Body elſe, and that a Tenant in Fee-ſimple of Copyhold Lands is only he that hath ſuch an Eſtate at Will in the Lands, as by the Cuſtom of the Manor, is not to determine by his Death, but that after his Death his Heir ſhall be Tenant at Will, ſo that when he grants away an Eſtate for Life, he has no Eſtate in the Lands left in him, but only a Power of being Tenant at Will, according to the Cuſtom of the Manor, when his Tenant for Life's Eſtate is ended; And I take it, that in the mean Time the Tenant for Life is Tenant at Will to the Lord, and ſhall do the Services; and if he commit a Forfeiture, the Lord ſhall take Advatage of it, and to this Purpoſe the Caſe of **Borenford v. Packington**, where the Cuſtom of the Manor was, that the Widow ſhould have her Free Bench; and it is there taken for granted that he ſhall hold of the Lord, and he accordingly admitted Tenant, and that the Heir ſhall not be admitted during her Life, which plainly proves, that the Courſe of Tenure of Copyhold Lands, is not like the Tenure of Freehold Lands at Common Law, for in that Caſe at Common Law, ſhe ſhould hold of the Heir; and though in Eſtates at Common Law, the Donee holds of the Donor by the ſame Services, the Donor holds over, becauſe the Statute creating a Reverſion in the Donor, the Judges made Expoſition according to the Common Law, that becauſe a Fee-ſimple conditional was held of the Feoffor by the ſame Services that he held over, therefore the Donee ſhould hold of the Donor by the ſame Services he held over, but at Common-Law the Tenant in Fee-ſimple conditional of Copyhold, could hold of no body, but of the Lord, therefore they cannot hold of the Donor that have now an Eſtate Tail in Copyholds Lands, but according to the Rule in expounding the Statute De donis, viz. by the Common Law, they muſt hold of the Lord, becauſe the Tenant in Fee-ſimple conditional of Copyhold Lands at Common Law, held of the Lord, and not of the Surrenderor. Gilb. Treat. of Ten. 159, 160, 161.

16. There is not any Book in the Law, but only **Mantell's Caſe** in Plow. Com. that the *Statute of Weſtm.* 2. extends to Copyholds, per Hatvey J. Godb. 369. at the End of pl. 458. Mich. 2 Car.

Gilb. Treat. of Ten. 156. cites S. C. and ſays, that it ſeems the *Meaning*

17. A Copyhold may be entailed; Not entailed, as within the Statute of Weſtm. 2. nor by Virtue of any Conſtruction of the Statute of Weſtm. 2. but there *may be ſuch an Eſtate before Weſtm. 2. of a Copyhold, which was a kind of baſe Eſtate, and which might be grantable to one and the Heirs of his Body, according to the Cuſtom*, and if he died without Iſſue

Iſſue it might be aliened again, *and that a Copyholder could not bar his Iſſue unleſs by a Recovery.* I conceive ſuch an Eſtate might be by Cuſtom, per Bridgman Ch. J. in delivering the Reſolution of the Court. Cart. 22. Paſch. 17 Car. 2. C. B. Taylor v. Shaw.

is this, that Eſtates Tail were before the Statute as to the Manner of Limitation by the Cuſtom of ſome Manors, as that an Eſtate was granted to a Man and the Heirs of his Body begotten, the Remainder over to another, but that in other reſpects theſe Eſtates were not Eſtates Tail before the Statute, as that the Tenant ſhould no ways alien to debar his Iſſue, or them in Remainder, or that if he made any Diſcontinuance, they ſhould have a Formedon in Deſcender or Remainder, but theſe Things were introdueed by the Statute upon the Eſtate, which was the ſame in Limitation by the Common Law, and ſo the Statute is ſaid to co-operate to make an Eſtate Tail, and this obviates the main Objection againſt intailing Copyholds by the Statute, viz. that every Copyhold Eſtate ought to be grantable Time out of Mind, and if an Eſtate Tail were introduced by the Statute, then that Eſtate was not grantable Time out of Mind; for if the Eſtate Tail were before the Statute the ſame in Point of Limitation of the Eſtate, as it is now ſince the Statute, then an Eſtate Tail has always been grantable Time out of Mind, tho' ſome other Qualities are now annexed to that Eſtate by Act of Parliament, which were not ſo before, and which may well be ſaid to give the Statute ſome Share in the making theſe Eſtates, ſince they are ſo very conſiderable; and that the Qualities ſhould be annexed to this Eſtate by the Statute De Donis, is no Ways unreaſonable, for this Act was made to redreſs a Wrong at Common Law, and was for the general Convenience and Profit of the weal Publick, and bringing an Eſtate in Copyhold Lands within the Statute De Donis, is no Prejudice to the Lord or Tenant, alters no Tenure, Eſtate, or Cuſtom of the Manor, which may any ways prejudice any body.

18. Juſtice Powys ſaid it was a Point before him upon the Circuit, whether a Copyhold could be entail'd within the Statute of W. 2. unleſs the Cuſtom of the Manor did warrant it; and it being ſaid by the Counſel that C. J. Holt was of an Opinion that this Statute did extend to a Copyhold, a Caſe was agreed on &c. Ch. J. Parker to this ſaid, that *if the conſtant Uſage of a Manor had been to alienate after Iſſue as at Common Law, without having any Remainder over, and ſuch Alienations had been always good*, it would be pretty hard to extend the Statute to ſuch Eſtates. Mich. 12 Ann. B. R.

19. Gilb. Treat. of Ten. 155. ſays, that the Caſes which he had before mention'd [as that of Heydon's Caſe, Rowden v. Malſter, Eriſh v. Reeves, Gurrey v. Sanderſon, Dell v. Higden, Clun v. Peaſe, and Otlery Monaſtery's Caſe.] are all the Laws he can find againſt Entailing Copyhold Lands, none of which go ſo far as to ſay, that if there have been an Eſtate Tail by Cuſtom, that it is not within the Statute De Donis, but only the Opinion of my Ld. Ch. B. which will be but of little Weight, when we have ſeen the Precedents againſt this Opinion, which I ſhall now examine; And firſt, there is Littleton's Opinion for the entailing of a Copyhold, for he ſays, that Tenant by Copy of Court Roll is, as if a Man be Seiſed of a Manor, within which Manor there is a Cuſtom which hath been uſed Time out of Mind, that certain Tenants within the ſame Manor have uſed to have Lands and Tenements, to have and to hold to them and their Heirs in Fee-ſimple, or Fee-Tail, ſo that there he ſays expreſsly, that Eſtates-Tail in Copyholds have been Time out of Mind, and therefore muſt have been before the Statute; But *Lord Coke*, in his Comment on Littleton, in another Place *ſays, that an Eſtate Tail may be, by* the Opinion of Littleton, by *the Cuſtom, the Statute co-operating with it*, for, ſaith he, there can be no Eſtate-Tail in Copyholds by Cuſtom only, nor no Eſtate-Tail by the Statute only, but *the Statute muſt co-operate with the Cuſtom.* Now the Queſtion will be, how this can be reconciled with what *Littleton ſays?* for he ſays, *that an Eſtate-Tail in Copyholds was Time out of Mind of Man, and then if Eſtates Tail were before the Statute, the Queſtion is out of Doors, whether a Copyhold can be intailed by Force of the Statute*; for if they were intailed at the Common Law, then as to them the Statute is but in Affirmance of the Common Law.

20. Thoſe that are againſt the entailing Copyhold Lands, ſay that the Eſtate Tail of Copyhold Land, mentioned by Littleton, muſt be underſtood *a Fee-ſimple Conditional* at Common Law, or elſe he contradicts himſelf; for he ſays In another Place, that all Inheritances at Common Law were Fee-ſimple, but that may be well enough underſtood of Freehold Eſtates; for *one may lay a general Rule for all Lands, meaning Freehold Lands, which will not extend to Copyhold Lands.* Gilb. Treat of Ten. 158.

(F. e. 2) Entails. By what Words.

Cro. C. 366. pl. 4. S. C. adjudged.— S. C. cited Gilb. Treat. of Ten. 244.

1. A. ſurrendered *to B. and C. and the longeſt Liver of them*, and *for Default of Iſſue of the Body of C.* then to the youngeſt Son of M. the Siſter of C. Reſolved, that the Words (of Default of Iſſue of the Body of C.) does not give him an Eſtate Tail by *Implication*, having an *expreſs Eſtate before*, but was expreſſed to ſhew the Commencement of the Remainder to the youngeſt Son of C's Siſter. Jo. 342. pl. 1. Trin. 10 Car. B. R. Seagood v. Hone.

2 Salk. 620. pl. 3. S. C. held accordingly.— 2 Ld. Raym. Rep. 1144. to 1154 S. C. adjudg'd, and the Arguments of the Judges at large.

2. A Surrender was *to A. for Life*, Remainder *to B. and his Wife, and their Heirs and Aſſigns, and for Default of ſuch Iſſue*, Remainder *over*; Per tot. Cur. except Gould J. this gives B. and his Wife a Fee-ſimple; but Gould held it gave only Eſtate Tail. 11 Mod. 57. pl. 34. Paſch. 4 Ann. B. R. Idle v. Cook.

3. Surrender was to the Uſe of *himſelf for Life*, Remainder to his *Wife for Life*, Remainder *to the Heirs of their Bodies*; there was no Admittance purſuant to this Surrender; the Son ſhall have a Fee-ſimple, for his Father's Eſtate continued in the ſame Plight. 11 Mod. 107. pl. 5. Mich. 5 Ann. B. R. Brown v. Dyer.

[G. e] Copyhold *Dock'd.* [Bar of Entails.]

This in Roll is Letter (B) in Fol. 506.

* Poph. 128, 129. S. C. an Eſtate Tail of a Copyhold *cannot* be barr'd *by a Surrender without a ſpecial Cuſtom* for that Purpoſe, *and to maintain ſuch Cuſtom, it ought to be ſhewed, that a Formedon had been brought upon ſuch Surrender, and Judgment given, that it does not lie.*

1. IF it be admitted that there may be an Eſtate Tail of a Copyhold by the Cuſtom co-operating with the Statute De Donis, yet this may, by the Cuſtom of the Manor, be barred by a Surrender, for as the Cuſtom creates it, ſo the Cuſtom may bar it. Mich. 15 Jac. B. R. between † *Lee and Brown*, reſolved per Curiam, upon Evidence at the Bar. Et Paſch. 16 Jac. B. R. in the ſame Caſe, reſolved again, upon Evidence at the Bar. Trin. 29 Eliz. between * *Hill and Upcheir*, cited, Co. Lit. 59. b. [60. b.]

Yet it was agreed, that it was a ſtrong Proof of the Cuſtom, that they, to whoſe Uſe ſuch Surrenders had been made, had enjoy'd Land againſt the Iſſues in Tail.

† 2 Brownl. 121, 122. Hill v. Upchurch, Mich 9 Jac. C. B. S. C. Coke Ch. J. ſaid, that it was adjudg'd

adjudg'd in 27 Eliz. for the Manor of North-Hall in Eſſex, that admitting a Copyhold may be intail'd by the Statute, then a Cuſtom that a Surrender ſhall be a Bar or Diſcontinuance of ſuch Eſtate is good for the Reaſon above.——— Supplement to Co. Comp. Cop. 78. S 12 cites S. C. and alſo Trin. 38 Eliz. Field v. Elliot, that a Surrender by Tenant in Tail of a Copyhold in Fee makes a Diſcontinuance; but ſays, that notwithſtanding thoſe Authorities and Caſes, he conceives, that a Surrender is no Diſcontinuance of a Copyhold Eſtate in Tail.

2. **If it be admitted that there may be a Tenant in Tail of a Copyhold, yet this may be barred** by a Common Recovery, **for a** Warranty may be annexed upon this this by a Surrender to an Uſe, or by a Confirmation or Releaſe with Warranty; **and it may be intended, that he ſhall have another Copyhold in Value, and alſo in Favour of Common Recoveries. Dubitatur, 37 Eliz. B. R. between** *Deil and Higdon.* **Mich. 43, 44 B. R. Morris's Caſe, per Curiam, without any Cuſtom to warrant it.** Cro. E. 272. pl. 17. S.C. the Jury found quod nunquam antea Videbatur talis Recuperatio in Curia Manerii prædicti.

The Court upon the Motion ſeem'd to think that it ſhould bind the Remainder, but they ſpake not much thereto; Sed adjornatur.——— 4 Rep. 23. a. pl. 3. Deal v Rigden S. C. adjudg'd, that where by Cuſtom of a Manor Plaints have been made in the Court of the Manor in Nature of Real Actions, if a Recovery be had on ſuch Plaint againſt Tenant in Tail, (admitting that Copyhold Lands may be entailed) it is a Diſcontinuance, and ſhall bar the Heir in Tail; For ſuch Plaints being warranted by the Cuſtom, it is an Incident which the Law annexes to ſuch a Cuſtom, that ſuch Recovery ſhall make a Diſcontinuance.——— Mo 358. pl. 488. S. C. reſolv'd, that a Common Recovery without Voucher is Diſcontinuance, and ſo is a Common Recovery with Voucher by Tenant in Tail of a Copyhold; And if Tenant in Tail comes in as Vouchee, this bars the Iſſues and Remainders, though no Cuſtom ever was for Recoveries in the Court of the Manor.——— A Recovery does not dock the Remainder without a Cuſtom; Per Twiſden J. Raym. 164. Mich. 19 Car. 2. B. R.——— Supplement to Co. Comp. Cop. 78. S. 12. cites S.C.

* A Surrender with Warranty to an Uſe, and a Grant accordingly, makes the Party in en le Per by the Surrenderor, and upon this Warranty the Surrenderor may be vouch'd in the Court upon Plaint there, and the Recovery in Value ſhall be only of other Copyhold Land within the Manor; Adjudg'd. Mo. 358, 359. S. C.——— A Warranty cannot be annexed to an Eſtate Tail of a Copyhold; Per Cur Cro. E. 380. pl. 32. Hill. 37 Eliz. C. B. Eylet v. Lane; But the Reporter adds a Quære. ——— See Clun v. Peaſe, pl. 10. Infra.

3. If *Copyholder in Tail Surrender to the Uſe of another in Fee, and a Copy is made to the other accordingly, this ſhall be a Diſcontinuance,* for by Livery, or other Way, he can't depart from the Land, and this Way which he may uſe ſhall be to him of equal Benefit, as Livery ſhall be to him that can make it. Arg. pl. C. 233. 4 Eliz. in Caſe of Willion v. Berkley.

4. The Caſe was, *Baron and Feme, Copyholders, to them and their Heirs,* and *the Baron* in Conſideration of Money paid by him to the Lord *obtaineth an Eſtate of the Freehold to him and his Wife, and to the Heirs of their Bodies*; the *Baron dieth, having Iſſue*; the *Feme enters, a Common Recovery,* and his Heir enters by the Statute of 11 H. 7. and agreed the Entry was lawful, for *the Copyhold by the acceptance of the new Eſtate was extinguiſhed.* Cro. E. 24. pl. 3. Hill. 26 Eliz. C. B. Stockbridge's Caſe. Supplement to Co. Comp. Cop. 73. S. 8. cites S. C.

5. A Copyhold was *ſurrendered to the Uſe of another in Tail,* and the Surrenderor [*Surrenderee*] *had Iſſue* 3 *Daughters,* and died. *One of the Daughters ſurrendered in Fee*; Agreed, that if this was only a Poſſibility, it could not be convey'd to another by a Surrender; Arg. Roll Rep. 318. cites 33 & 34 Eliz. B. R. Gravenor's Caſe.

6. A *Surrender* of Copyhold Lands was made within the Manor of Stevenſon, *to the Uſe of J. S. and the Heirs of his Body*; and *after Iſſue, he ſurrendered the Lands unto another.* It was agreed by all the Juſtices, that it was a Fee-ſimple conditional at the Common Law, and after Iſſue, that he might alien the Lands. Supplement to Co. Comp. Cop. 77. S. 12. cites Hill. 34 Eliz. B. R. Stanton v. Barney. Cro. E. 373. pl. 20. S. C. ——— S. C. cited per Cur. Godb. 368. in pl. 458. ———

A *Copyhold* was *ſurrendred to the Uſe of Copyholder's Will, who deviſed it to J. in Tail,* Remainder *to H. in Tail* &c. *J. hath Iſſue, and ſurrenders to* the Uſe of *his Wife for Life*; it was adjudged, that ſince the *Jury found*

found it was not the Custom of the Manor to have an Estate Tail in a Copyhold, that *J had a Fee-simple conditional*, and that by his having of Issue, he had performed the Condition, and the Surrender to the Use of his Wife was good. Gilb. Treat. of Ten. 154, 155.

* Supplement to Co. Comp. Cop. 78. S. 12. cites S. C. adjudged.

7. An *Infant* [**Tenant in Tail*] *surrender'd Copyhold to the Use of a Stranger, who was admitted.* The Infant may enter at his full Age, because *this is no Bar nor Discontinuance.* Mo. 597. pl. 814. Hill. 35 Eliz. Gooles v. Grane.

Supplement to Co. Comp. 78. S. 12.

8. A *Surrender of Copyholder in Tail is no Discontinuance*; Agreed. Mo. 358. pl. 488. Trin. 36 Eliz. Dell v. Higden.

S. C. and S. P. and says, that according to this it was adjudged 37 Eliz. in Case of Gravenor v. Brooks.——Brownl. 36. S. P. held accordingly by Coke Ch. J. and Foster J. of the same Opinion, in Case of Rogers v. Powell.——S. P. accordingly, and that it is no Bar to the Entry of the Issue in Tail, and so was it holden in the Serjeants Case, when Audley, who afterwards was made Chancellor of England, was made Serjeant; and afterwards it was adjudged, that the Entry of the Infant was lawful. Le. 95. pl. 124. Hill. 30 Eliz. B. R. Knight v. Footman.

Supplement to Co. Comp. Cop. 78. S. 12. cites S. C. that Copyhold Lands were entail'd, and the Copyholder surrendred the said Lands to the Use of another Man in Tail with divers Remainders over, and then he died, it was said in this Case, that it was no Discontinuance of the Tail, but the Issue in Tail, notwithstanding the Surrender might enter. But it was said in that Case, that if it were a Discontinuance, that in such Case the Formedon in the Reverter did not lie by the Tenant in Tail, because when a Copyholder makes a Gift in Tail, he has no Reversion but a Possibility; and the Lord shall avow upon the Donee for the Rents and Services, and not upon the Donor.

9. A *Surrender* was *unto the Use of one in Tail, with divers Remainders over in Tail*; The *1st. Surrenderee died without Issue*; and first it was agreed and adjudged, that it was no Discontinuance. 2dly. If it were a Discontinuance, yet a Formedon in the Remainder did not lie, because there *ought to be a Custom to warrant the Remainder as well as the first Estate Tail*; for *when a Copyholder in Fee maketh such a Gift, no Reversion is left in him, but only a Possibility*, and the Lord ought to avow upon the Donee, and not upon the Donor; and there is a Difference when he makes or gives an Estate of Inheritance, and when he makes a Lease for Life or Years; for in the one Case he hath a Reversion, in the other not. 3dly. A Recovery shall not be without a special Custom as it was agreed in the Case of the Manor of Stepney, because the *Warranty cannot be knit to such an Estate without a Custom.* Godb. 368. pl. 458. cited by Harvey. J. as adjudged 37 Eliz. C. B. in the Case of Lane v. Hill.

Same Points were found by Verdict, and that a Recovery in a Writ of Entry en le Post was suffered with Voucher over; the Court at first conceived it would be hard to warrant such Recoveries without a special Custom; Quære. But afterwards it was adjudged that a *Recovery with Voucher* over against the Tenant in Tail himself, is at least a *Discontinuance* as it is against Tenant in Tail in Possession at Common Law; but whether it be a Bar to the Intail they agreed not in Opinion; but for the Cause of Discontinuance Judgment was given for the Defendant. Cro. E. 380. pl. 32. Hill.

10. In Trespass it was found, that the Land was Copyhold demisable in Fee, in Tail, or for Life, and that *A. was seised* thereof *in Tail*, Remainder *to B. in Tail*; that *A. suffered a Recovery with Voucher in the Court of the Manor*, and afterwards died without Issue, and it was found, that there was *no Custom to suffer Recoveries in the Court of the said Manor*; all the Court held, that this Recovery shall not bind the Issue in Tail, but upon a Recompence in Value, and here he can have no Recompence of other Lands in Value; For he cannot have Land at Common Law, nor can he have Customary Land; For if it should be so conveyed, then the Lord would lose his Fines, and the Party to whose Use the Recovery was, should hold his Land as a Copyholder without Grant or Admittance by the Lord, which is contrary to the Nature of a Copyhold. Cro. E. 391. pl. 14. Pasch. 37 Eliz. B. R. Clun v. Pease.

Hill. 57 Eliz. C. B. Eylet v. Lane and Pearce.—— Recovery *in Value* ſhall be only of other *Copyhold Land W. in the Manor* Mo. 359 pl. 488. Trin. 36 Eliz. Dell v. Higden ——Supplement to Co. Comp. Cop. 79 S. 12. cites S. C. and ſays, Note for a Concluſion of this Point, that at this Day, by the Cuſtoms of ſeveral Manors, Common Recoveries are had and ſuffered in the Courts of Lords of Manors for the docking and barring of Eſtate Tails of Copyhold; and much Inconveniency would enſue, both if Copyholds at this Day might not by Cuſtom be entailed, and likewiſe if by Cuſtom Common Recoveries had of Eſtates Tail with Voucher over in the Courts of Lords of Manors ſhould not thereby be docked and barred.

11. A Copyhold may be entailed by ſpecial Cuſtom, and *barred by a Common Recovery, and a Surrender may* bar the Iſſue in Tail *by a ſpecial Cuſtom*; Agreed. Mo. 637, 638. pl. 877. Hill. 37 Eliz. Church v. Wyat. Gilb. Treat. of Ten. 164. cites S. C. & S. P.

12. *Recovery* may be in the Lord's Court of a Copyhold which ſhall bar an Entail; Agreed. Mo. 753. pl. 1037. Hill. 1 Jac. Oldcot v. Levell. Gilb. Treat. of Ten. 164. cites S. C. & S. P. agreed; and obſerves, that it is ſaid Generally, and is not put upon any Cuſtom.

13. An old *dormant* Entail *is preſumed to be cut off* after Purchaſes and many Admittances in Fee. Clayt. 26. pl. 45. Aug. 10 Car. Wadſworth's Caſe.

14. The Manner of barring Entails of Copyholds within the Manor of Wakefield in Yorkſhire, is, for the Copyholder to leaſe his Lands for more Years than he ought, or to refuſe doing his Services, and then the *Lord ſeiſes the Lands for the Forfeiture, and grants them over to another by the Conſent of him who made the Forfeiture*; but Roll Ch. J. ſaid, that he conceiv'd there could be no Cuſtom for this, becauſe the Seiſure for a Forfeiture deſtroys the Copyhold Eſtate; For it is at the Lords Election, after the Seiſure, whether he will grant the Eſtate again by Copy of Court-Roll, or not, and you do not prove that the Cuſtom binds him to it. Sty. 450. Paſch. 1655. Pilkington v. Bagſhaw. Gilb. Treat. of Ten. 164 cites S. C. and ſays it is held to be good Bar of a Copyhold Eſtate for the Tenant in Tail to commit a Forfeiture, and the Lord to ſeiſe and grant to another; or if the Tenant in Tail ſurrenders to the Uſe of the Purchaſor and his Heirs, and the Purchaſor commits a Forfeiture, and the Lord ſeiſes and regrants, this is held to be a good Cuſtom to bar the Eſtate Tail of a Copyhold, though the Tenant in Tail be not privy to it; By this it ſeems plain, that if Tenant in Tail commit a Forfeiture, his Iſſue is bound by it, but the Lord cannot grant to no body elſe but to him that he intended to have the Eſtate. Thus it ſeems plain to me, that *as Eſtates by the Cuſtom may be entailed, ſo by the Cuſtom alſo thoſe Eſtates-Tail may be cut off by Surrender, Recovery or Forfeiture, according to the ſeveral Cuſtoms of Manors.*——Cuſtom of the Manor was, *to cut off Entails by committing a Forfeiture*, and then appointing to whoſe Uſe the Forfeiture ſhould be. A Copyholder makes ſuch Forfeiture, and Appointment and dies before Admittance of Ceſty que Uſe. The Heir of the Copyholder was admitted, and then the Lord of the Manor ſold the Manor to J. S. who admitted the Ceſty que Uſe, and his Admittance held good, and that his Admittance ſhall avoid all Meſne Acts or Diſpoſitions made by the Lord as if admitted on a Surrender. 2 Saund. 422. pl. 70. Paſch. 24 Car. 2. Grantham v. Copley.——Gilb. Treat. of Ten. 164, 165. cites S. C.

15. A *Copyholder in Tail accepts a Feoffment*; this deſtroys not the Cuſtom as to his Iſſue in Tail, for he has no Power to conclude him; yet if he commit a Forfeiture, and the Lord ſeiſes, it ſeems his Iſſue is bound, it being a common and cuſtomary Way to cut off the Entail of Copyhold Lands. Gilb. Treat. of Ten. 282, 283. cites Cart. 6. 7. Mich. 16 Car. 2. C. B. Taylor v. Shaw.

16. Upon a Trial at Bar in Ejectment for Lands held of the Manor of Wakefield, it was admitted, that *by the Cuſtom* of that Manor, *Copyhold Lands might be entailed, and* that the Cuſtom *to bar ſuch Entails is for the Tenant in Tail to commit a Forfeiture, and then the Lord to make three Proclamations, and ſeiſe the Copyhold, and then to grant it to the Copyholder, and his Heirs; and another Cuſtom* to bar ſuch Entails is, *for the Tenant in Tail to make a Surrender to the Purchaſor*

and his Heirs, and then for the Purchaſor (intending to bar the Intail and Remainders) to commit a Forfeiture, and the Lord to ſeiſe, and three Proclamations &c. that hereby the Iſſue in Tail is barr'd, though the Tenant in Tail did not join; And this Cuſtom was found by the Jury, and allow'd per Cur. as a good Cuſtom. Sid. 314. pl. 32. Mich. 18 Car. 2. B. R. Pilkington v. Stanhope.

The Diſmiſſion affirmed in Dom' Proc' Parl. Caſes 69.

17. *Bill by a Remainder-man in Fee* of a Copyhold expectant on an Eſtate Tail, which was ſpent, *to be relieved againſt an erronious Common Recovery in the Lord's Court*, praying that the Lord may be decreed to ſuffer the Plaintiff to bring a Plaint in the Lord's Court, in Nature of a Writ of Error, to reverſe this Recovery, or that this Court would relieve on the Merits. Defendant demurred. Allowed by Trevor, Maſter of the Rolls, and after per Jeffries C. tho' the Errors aſſigned were ſuch as would have been groſs Errors in a Recovery of a Freehold Eſtate; but if there had been an *Error in any adverſary Proceedings* in the Lord's Court, this Court would order the Lord's Court to proceed and examine it, and told the Counſel they might try the Common Law Court if they would grant them a Mandamus, but they ſhould have no Aid from this Court. Vern. R. 367, 368. pl. 360. Hill. 1685. Aſh v. Rogle and the Dean and Chapter of St. Pauls.

But if he takes a *Conveyance of the Freehold in Fee*, Ld. Chan. ſeemed to make little Doubt but that the Copyhold was *merged*.

18. A. Copyholder for Life, Remainder to his 1ſt. 2d. &c. Sons in Tail, Remainder to B. in Fee. A. *before a Son born gets a Conveyance of the Fee* of the Copyhold, thinking t'would merge his Eſtate, and deſtroy the contingent Remainder; But decreed that the contingent Remainder is not deſtroyed, the Freehold being in the Lord. 2 Vern. 243. pl. 228. Mich. 1691. Mildmay v. Hungerford.

Vern. R. 458. pl. 434. Paſch. 1687 Parker v. Turner. ——— And afterwards decreed accordingly, and that the Purchaſor ſhould enjoy againſt the Iſſue in Tail. Vern. 393. S. C. ——— 2 Chan. Caſes 174. Barker v. Turner. S. C. Lord Chancellor was of Opinion for the Purchaſor and that the Conveyance was good againſt the Heir; For the Copyhold being ſever'd from the Manor, there is no means to bar it; but by conveyance at Common Law; the Intail is not within the Statute of Weſtminſter 2d. But Lord Chancellor took time to adviſe.

19. A. was *Tenant in Tail of the Truſt of* a Copyhold, Remainder to J. S. A. *requeſted the Truſtees to ſurrender to him* in Tail, which they refuſing, A. brought a Bill to compel them, and they put in their Anſwers. Then A. died, but Pending the Suit, he *went to the Lord's Court and deſired to be admitted to ſurrender*, which was refuſed, becauſe the legal Eſtate was in the Truſtees. Upon which A. *by Will, deviſed the Premiſſes* to his Wife &c. ſubject to the Payment of his Debts. Lord Cowper decreed the Eſtate to go according to the Will, there having been no Laches in the Teſtator, and having deviſed the Eſtate to the Uſes and Purpoſes in his Will, his Lordſhip conceived that was ſufficient to *bar the Intail of a Truſt*. 2 Vern. 583. pl. 525. Hill. 1706. Otway v. Hudſon & al'.

20. A Recovery with Voucher doth not of common Right bar the Entail of a Copyhold, but that *as to the entailing them, Cuſtom is requiſite, ſo without Cuſtom the Entail cannot be cut off.* The Reaſons are, that becauſe without an intended Recompence in Value, no Recovery ſhall bind, and the Surrenderee comes in in the Poſt, by the Lord, and is not in in the Per by the Party, and ſo *no Warranty can be annexed to the Copyholder's Eſtate*; beſides, they have only an Eſtate at Will, to which no Warranty can be annexed of Common Right, for no Eſtate leſs than a Freehold is capable, by Common Right, of having a Warranty annexed to it; And accordingly it was adjudged in **Clun's Caſe**, and all the Judges held, that the Recovery did not bind without a Cuſtom. But there is a Quære, whether Judgment was given

given for the Plaintiff upon the principal Matter, or no? For it ſeems to have been a Diſcontinuace, and that the Defendant's Entry could not be lawful. There are two other Caſes where this Queſtion came in Diſpute, but was not reſolved. It was held, in the Caſe of **Church v. Wat**, that a Recovery by Cuſtom may bar, which implies, that without it it cannot bar; But in the Caſe of **Oldcot v. Level**, Mo. 753. it was agreed, that a *Recovery* may be in the Court of the Lord that will bar a Copyhold, and there it is ſaid Generally, and is not put upon any Cuſtom. It is debated, whether, if there be a Cuſtom to bar the Iſſue of a Copyhold Eſtate by ſurrender to one in Fee, whether that be good. Mo. 188. pl. 336. **Hill v. Morſe**. Now my Lord Coke ſays by Cuſtom, by Surrender the Entail of a Copyhold may be cut off. Gilb. Treat. of Ten. 163, 164.

21. A. Copyholder in Fee *by Marriage Articles covenants to* ſurrender to Truſtees to the Uſe of himſelf for Life, Remainder *to the Heirs Males of his Body*, *Remainder to the Heirs of his Body*. A. dies before any Surrender, and leaves B. his Son, and M. his Daughter. *B. ſurrendered* to J. S. and others his Creditors, according to an Agreement, for Payment of his Debts. There was *no Cuſtom to bar Entails by Recoveries*. B. dies without Iſſue. Lord Harcourt decreed the Copyhold to the Daughter; But upon a Rehearing Cowper C. decreed for the Surrenderees, becauſe of the want of a Cuſtom to ſuffer Recoveries, and ſo held the Surrender would *bar the Entail* in Caſe the Copyhold had been well ſettled. 2 Vern. 702. pl. 625. Mich. 1715. White v. Thornburgh.

Where a Copyhold is intailed it *will not be* defeated or *barred by a bare Surrender unleſs a particular Cuſtom be found* to warrant it. Per Harcourt C. Ch. Prec. 426. But per Cowper C. a Surrender by ſuch Tenant in Tail will bind his Iſſue unleſs a particular Cuſtom be found that a Common Recovery is neceſſary. Ch. Prec. 429. Mich. 1715. White v. Thornborough. Gilb. Equ. Rep. 107. S. C. in totidem Verbis.

(G. e. 2) Entails. Pleadings &c.

1. TO *prove a Cuſtom to entail* Copyhold Lands within a Manor, it is not ſufficient to ſhew Copies of Grants to Perſons and the Heirs of their Bodies, but they *ought to ſhew that Surrenders made by ſuch Perſons have been enjoy'd by Reaſon of ſuch Matter*; Arg. But per Wray Ch. J. That is not ſo; For cuſtomary Lands may be granted in Tail, though no Surrenders have been made within Time of Memory. Le. 175. pl. 244. Hill. 31 Eliz. B. R.

Gilb. Treat. of Ten. 158. S. P. accordingly, *or it muſt be ſhewn, that the Iſſue have recovered after the Alienation of his Anceſtor*, or the like.

2. If a Copyholder ſurrenders in Tail, and the Heir of the Donee is to *bring a Formedon*, he muſt *count* of the Gift made by the Copyholder that ſurrendered, and not by the Lord, for he is but the Inſtrument to convey it, and nothing paſſes from him. Cro. E. 361. pl. 22. M. 36 & 37 Eliz. C. B. Poulter v. Cornhill.

(G. e. 3) Fines levied of Copyholds.

1. *ONE recovered Copyhold Lands in the Court of the Manor by Plaint in Nature of a Writ of Right.* It was mov'd in C. B. whether a *Precept* might be awarded *out of that Court, to execute the Recovery*, and to put the Recoveror in Poſſeſſion *with the Poſſe Manerii*, as in ſuch Caſes at Common Law, with the Poſſe Comitatus. But reſolv'd clearly, that it could not, for Force in ſuch Caſes is not juſtifiable, but by Command out of the King's Courts. 3 Le. 99. pl. 142. Mich. 26 Eliz. C. B. Anon.

2. A Copyhold Eſtate is not barr'd by a *Fine and 5 Years Nonclaim.* Noy 23 cites Trin. 2 Jac. Mills v. Bradley.

3. If there be a *Leſſee for Life, Remainder for Life*, of a Copyhold, and the *firſt Tenant for Life doth purchaſe the Freehold of the Copyhold, and levies a Fine* thereof, and *five Years paſs*, this Fine ſhould bar him in the Remainder of his Copyhold. Supplement to Co. Comp. Cop. 80. S. 13. cites Mich. 9 Jac. in C. B. that it was adjudged accordingly.

4. A Copyhold was granted to A. B. and C. for 3 Lives ſucceſſively, Remainder to his eldeſt Daughter for Life &c. The Lord by Bargain and Sale enroll'd ſold the Inheritance to A. in Fee, and levied a Fine to him with Proclamations. A. died, and D. his Son and Heir levied a Fine &c. B. entred. Reſolv'd, that B. cannot enter after the Bargain during the Life of A. For B's Eſtate was to commence in Poſſeſſion after the Death of A. and B's Eſtate is not deveſted hy the Bargain and Sale, or Fine, for the Lord did what was lawful for him to do, and A. was in lawful in Poſſeſſion, and was only paſſive and not active; and by Acceptance he who is in lawful Poſſeſſion by Force of a particular Eſtate, cannot deveſt the Eſtate of him who has the Frank-Tenement or Inheritance. 9 Rep. 104. Paſch. 10 Jac. Margaret Podger's Caſe.

5. Copyholder in Tail *levies a Fine* of the Land; the Intereſt and Eſtate is gone. Cart. 24. Paſch. 17 Car. 2. C. B. by Bridgman Ch. J. in delivering the Reſolution of the Court. Taylor v. Shaw.

6. In the Caſe upon a ſpecial Verdict in Ejectment *a Copyholder of a Dean and Chapter levied a Fine with Proclamations, and 5 Years paſſed without any Seiſure or Claim* by him that was Dean at the Time of the Fine levied, and *whether the ſucceeding Dean was barred, was the Queſtion*; and the Court, at the firſt opening, *held clearly that he was not*; for if ſo, the Statutes of 1 & 13 Eliz. which reſtrain the Alienation of the Church-Revenue, would be of ſmall Effect; cites 11 Co. Magdalen College's Caſe. Vent. 311. Trin. 29 Car. 2. B. R. in Caſe of Howlet v. Carpenter.

(H. e) Frank-Bank, and Tenancy by the Curteſy. In what Caſes; And what it is; And how conſidered.

1. IT ſeems, that *during the Life of the Tenant in Frank-Bank, who by her Admittance is Tenant to the Lord*, and a Copyholder, *the Heir is not admittable*. See Le. 1. pl. 1. Hill. 25 Eliz. B. R. Borneford v. Packington.

Gilb. Treat. of Ten. 160, 161 cites S. C. and that it is there taken for granted, that ſhe ſhall hold of the Lord, and that the Heir ſhall not be admitted during her Life, which, he ſays, plainly proves, that the Courſe of Tenure of Copyhold Land is not like that of Freehold Lands at Common Law; For in ſuch Caſe ſhe ſhould hold of the Heir.

2. The Cuſtom of a Manor was, that if any Man had a Wife ſeiſed in Fee of Copyhold Lands, according to the Cuſtom of the Manor and had Iſſue by her, that he ſhould be Tenant by the Curteſy of the Land; it was found, that *A. a Copyholder was ſeiſed, and had Iſſue a Daughter, who was married to J. S. who had Iſſue; A. died; his Wife entred*; the *Wife died before Admittance.* The Court ſeemed of Opinion, that the *Husband was well entitled to be Tenant by the Curteſy before Admittance of the Wife*, and the Delay of the Admittance by the Lord ſhould not prejudice the Husband, being a third Perſon. Mo. 271, 272. pl. 425. Hill. 31 Eliz. Ever v. Aſton.

And. 192. pl. 227. Ewer v. Aſtwicks S. C. and agreed by all, that there cannot be a Tenant in Dower, or by the Curteſy, either of Fee-ſimple or other Eſtate of Copyhold, unleſs the Cuſtom allows it, and therefore *in Action brought ſuch Cuſtom muſt be ſhewn in pleading.*——Gilb. Treat. of Ten. 271. cites S. C. and ſays, Quære, whether a Feme be ſeiſed to make her Husband Tenant by the Curteſy before Admittance, where the Cuſtom is for Tenancy by Curteſy? It ſeems reaſonable it ſhould make the Husband Tenant per Curteſy, as well as the Poſſeſſion of the Brother before Admittance make the Siſter Heir; and by the ſame Reaſon the Widow ſhall her Widow's Eſtate, though her Husband was not admitted.——If a Copyhold deſcend unto a married Woman, and her Husband takes the Profits thereof, and ſuffers a Court Day to paſs without Admittance of his Wife, and then the Wife dies, the Husband ſhall not be Tenant by the Curteſy, but in the 12 Eliz. Dy. 291, 292. it ſeems that the contrary ſhould be the better Opinion. Calth. Reading, 69.

3. A Woman *Copyholder durante Viduitate* ſua *ſowed the Land, and before Severance* of the Corn *took Husband.* It was adjudged that the Lord ſhould have the Corn, and not the Husband, for although the Eſtate of the Wife was incertain, and determined by the Limitation, and not by the Condition in Fait, or in Law, yet becauſe it determines by the Act of the Feme herſelf, the *Lord have the Corn*; but otherwiſe it would be had ſhe leaſed the Land, and the Leſſee had ſown it, in ſuch Caſe the Leſſee ſhould have the Corn; adjudged by Popham and Clench, Contradicente Fenner, & abſente Gawdy. Cro. E. (460.) bis. pl. 10. Paſch. 38 Eliz. B. R. Oland v. Burdwick.

Supplement to Co. Comp. Cop. 81. S. 15. cites S. C.—— Mo. 394. pl. 512. S. C. adjudged for the Lord. ——5 Rep. 116. a. Oland's Caſe S. C. adjudged, that in ſuch Caſe the Lord ſhall have the Emblements, and that if ſhe had leaſed the Land, and the Leſſee had ſowed it, the Leſſee ſhould not have the Emblements; For though his Eſtate is determined by the Act of a Stranger, yet he ſhall not be (as to the firſt Leſſor) in better Caſe than his Leſſor was.——Goldsb. 189. pl. 136. S. C. adjugd'd againſt the Husband.

4. Prohibition. It was held by all the Court, that if a Copyholder makes a *Leaſe for Years* of Land whereof a Feme by Cuſtom is to have her Widow's Eſtate, *ſhe ſhall not avoid* the Leaſe, *unleſs there be an eſpecial Cuſtom to avoid it*; For he comes under the Cuſtom, and by the Lord's Licence as well as the Feme. Cro. J. 36, 37. pl. 12. Trin. 2 Jac. B. R. Fareley's Caſe.

Lev. 21. where an Eſtate for Years was to commence after the Determination of

5. The Eſtate durante Viduitate *is but a Branch of the Husband's Eſtate*, and the Admiſſion of the Husband ſuffices for the Eſtate of the Wife; and the Eſtate of the Husband was big with the Eſtate of the Wife, which was to be brought forth by the Death of the Husband; Per Hobart. Noy 29. Hill. 15 Jac. C. B. Rennington v. Cole.

an Eſtate for Life, Per Twiſden and Windham J. the Leaſe for *Years* don't *commence* till after the Death of the Wife. Hill. 12 & 13 Car. 2. B. R. Chantrell v. Randall ——— 2 Sid. 165. Clarke v. Candle S. C. Hill. 1659. B. R. adjornatur. ——— *Covenant* that an Eſtate is *free from Incumbrances, except an Eſtate for Life*, that was thereon; the Eſtate was held of a Manor, where by the Cuſtom the Widow of Tenant for Life was to hold for Widowhood. Tenant for Life died, and left a Widow; it is no Breach of Covenant; cited Arg. 2 Vern. 45. As the Caſe of Twiford v. Warcup. ——— It is ſo far a Branch of the Husband's Eſtate, that though the Copyhold be of the Cuſtom of *Borough-Engliſh*, and the Husband dies, leaving 2 *Sons by one Venter, and* 2 *Sons by another*, and *all die, except the eldeſt Son, in her Life*, upon the Wife's Death the eldeſt Son ſhall inherit by reaſon of the old Eſtate being continued by the Frank-Bank, and though the Court were at firſt divided upon this Point, yet Judgment was after given for the Plaintiff, and Powell J. ſaid, that then the eldeſt Son ſhould take as Heir to his Father. Holt's Rep. 165, 166. Trin. 5 Ann. Brown v. Dyer.

6. Where a *Mortgagee* of ſuch Eſtate, where the Cuſtom was for Frank-Bank, had *aſſigned to the Heir*, the Court were of Opinion, Obiter, that the Widow paying the Mortgage Money might be relieved *in Equity*. Cumb. 234. Hill. 5 W. & W. in B. R. Benſon v. Scott.

3 Lev. 385. S. C. ——— 4 Mod. 251. S. C. ——— The Widow's Title don't commence by the Marriage, but only by the dying ſeiſed; Per Holt, Cumb. 234. S. C. ——— Skin. 406. S. C. adjudged.

7. In Ejectment, a ſpecial Verdict was found, viz. A Cuſtom that the Tenants of the Manor having a Mind to alien, might ſurrender into the Hands of two Copyholders &c. that Scott being a *Copyholder in Fee, did ſurrender &c. to the Uſe of the Plaintiff in Fee, and died*, leaving *his Wife*, who *claimed her Free-Bank by the Cuſtom*, and *at the next Court the Surrender was preſented, and thereupon the Plaintiff admitted*; and the Queſtion being, whether the Surrenderee, or the Wife for her Free-Bank, ſhould have theſe Lands? It was adjudged for the Plaintiff, for the Wife's Title does not commence till after the Death of the Huſband, and then only to thoſe Lands of which he died ſeiſed, but the Plaintiff's Title began by the Surrender; for the Admittance relates to that, and that the Caſe of two Jointenants, 1 Inſt. 59. b. rules this Caſe. 1 Salk. 185. pl. 3. Paſch. 5 & 6 W. & M. B. R. Benſon v. Scott.

——12 Mod. 49. S. C. adjudged. ——Carth. 275. S. C. adjudged. ——So where the Cuſtom of a Manor, and which was confirmed by Act of Parliament, was, that the Wife ſhould have 3 Parts of the Land of which the Husband died ſeiſed in Fee for her Life, and for 12 Years after, and, the Husband was ſeiſed in Fee, but *became Bankrupt*, and the Commiſſioners ſold their Land, but before the Admittance of the Vendees he died, the Wife ſhan't have the Land, for her Husband did not die ſeiſed. Jo. 451. pl. 4. Hill. 15 Car. B. R. Palmer v. Blake. ——Cro. C. 568. pl. 6. Parker v. Bleeke S. C. adjudged, for he did not die Tenant becauſe the Bargain and Sale took his Eſtate from him, and ouſted him of the Copyhold. ——— S. C. cited 2 Vern. 194, 195. pl. 176. Mich. 1690. per Cur.

8. If a Copyholder makes a *Leaſe for Licence*, this *will defeat* the Wife of her *Free-Bench*; Agreed. Freem. Rep. 516. pl. 692. Mich. 1699. Anon.

9. It was agreed, that if the Husband forfeited, the Wife loſt her Free-Bench; for, as if he ſurrendred, it defeated his Wife of her Free-Bench; ſo if he did any Act which determined his Eſtate, it deſtroy'd her Free-Bench. Freem. Rep. 516. pl. 692. Mich. 1699. B. R. Anon.

10. A Copyholder *ſurrendred* his Eſtate *to make a Mortgage, and died before the Mortgagee was admitted*, ſo that the Eſtate remained in him at the Time of his Deceaſe, and by the Cuſtom of the Manor, the Widows was entitled to her Free-Bench; and *after the Death of the Copyholder the Mortgagee was admitted*; Per Treby Ch. J. who ſaid it was referred to him, and he adviſed with the Judges of the King's-Bench upon it, and determined it, that *this Admittance related to the Surrender*, that

that although the Husband died ſeiſed, yet the Wife ſhould not have her Free-Bench; and ſo it was ſaid to be lately reſolved in B. R. Freem. Rep. 516. pl. 692. Mich. 1699. B. R. Anon.

11. Frank-Bank was *to encourage the Tenant to go into the Wars*, ſo that if he was killed the Lord would not take Benefit, but gave the Eſtate to the Wife to encourage him to fight; Per Powell J. who thought this was the Original of Frank-Bank. 11 Mod. 95. pl. 3. Mich. 5 Ann. B. R. Anon.

(H. c. 2) Frank-Bank. Widows, of what Perſons ſhall have Frank-Bank.

1. WIDOW of a *Bankrupt*, where the Comiſſioners have made an Aſſignment of the Copyhold, ſhan't have her Frank-Bank, cited as the Caſe of Parker Bleake, 13 Eliz. 2. Vern. 195. in Caſe of Moyſes v. Little. Cited 4 Mod. 253. in Caſe of Benſon v. Scot. —— Gilb. Treat. of Ten. 294. cites S. C. & S. P. for after Sale of the Lands by the Commiſſioners by Deed indented and inrolled, if the Husband dies, he does not die ſeiſed.

2. Copyholder for Life, where the Cuſtom was for Frank-Bank, was *attainted for Felony*, and executed; per Winch. J. who only was in Court, it ſeemed the Widow ſhan't have Free-Bank without a Special Cuſtom. Winch. 27. Mich. 19 Jac. C. B. Allen v. Brach. Gilb. Treat. of Ten. 305. cites S. C. ſays ſhe ſhall loſe it, though there be no ſpecial Cuſtom; for this amounts to an Alienation.

3. The Cuſtom was, that the Feme of Copyholder for Life ſhould have Eſtate Durante Viduitate. The *Copyholder took a Leaſe for Years*, by which the Copyhold was determined. Adjudged that ſhe ſhall not have Eſtate durante Viduitate after her Baron's Death. Jo. 462. pl. 3. Trin. 17 Car. B. R. Dugworth v. Radford.

4. The *Widow of a Ceſtui que Truſt* of a Copyhold Eſtate ſhall have her Free-Bench as well as if her Husband had the legal Eſtate. 2 Wms's Rep. 644. cited per Sir Joſeph Jekyl, Maſter of the Rolls, in the Caſe of Banks v. Sutton, as the Caſe of Otway v. Hudſon decreed by the Lord Cowper 27th October, 1706.

(H. e. 3) Frank-Bank. How. And Pleadings.

1. EJectione Firmæ was brought againſt a Woman, who *juſtified, becauſe the* Wife of a Copyholder by the Cuſtom *ought to have for Life*. The Cuſtom was travers'd. The Defendant *gave Evidence of a Widow's Eſtate only*. Held, that it will not maintain the Iſſue, for this is of a leſs Eſtate, and the Word (tantum) makes it ſtronger againſt the Feme. Dyer. 192. pl. 23. Mich. 3 Eliz. Linſey v. Dixey. S. C. cited as adjudged accordingly. 4 Rep. 30. a. in pl. 19.

2. In Treſpaſs, the Defendant juſtified, becauſe Sir J. S. was ſeiſed of the Manor of D. within which Manor the Cuſtom is, that if any Man taketh to Wife any cuſtomary Tenant of the ſaid Manor, and hath 2 Le. 208. pl. 257. cites S. C. as adjudged ac-

cordingly. —— This Caſe was denied. 1 Salk. 243, 244 Hill. 2 Ann. B. R. in pl. 4. per Holt Ch. J. in delivering the Opinion of the Court, in the Caſe of Clement v. Scudamore. —— But in Wms's Rep. 69. of the S. C. Holt only takes Notice that this Caſe was objected, and after repeating the Subſtance of it ſays only as follows, (viz.) Now, admitting that Caſe to be Law, it does not affect ours &c. —— But at the End of the Report is a Memorandum, that upon the firſt Argument Holt and Powell Juſtices *denied* Sir J. Savage's Caſe *to be Law*. —— S. C cited according to 2 Le. becauſe he is out of the Cuſtom. Gilb. Treat. of Ten. 308.

hath Iſſue, and ſhall overlive his Wife, he ſhall be Tenant by the Curteſy; and pleaded farther, that *he took to Wife one Ann, to whom, during the ſaid Coverture a cuſtomary Tenement of the ſaid Manor did deſcend, and* that he *had Iſſue by* the ſaid Ann, *and that ſhe is dead*, and ſo &c. And it was adjudged, that the Husband, by this Cuſtom, upon this Matter, ſhould not be Tenant by the Curteſy; for Ann was not a cuſtomary Tenant of the ſaid Manor at the Time of the Marriage. 2 Le. 109. pl. 140. Trin. 29 Eliz. in B. R. Savage's Caſe.

Supplement to Co. Comp. Cop. 73. S. 8. cites S. C.

3. A Cuſtom of a Manor was found to be, that if a Copyholder in Fee died ſeiſed, his Feme ſhould hold it during her Life, as Frank-Bank. The *Lord infeoffs the Copyholder, who died ſeiſed.* Whether ſhe ſhall hold it was the Queſtion? Andadjudged, that ſhe ſhould not; *But if the Lord had infeoffed a Stranger* of that Land, yet the Land remained Copyhold, and the Cuſtom is not taken away. Cro. J. 126. pl. 14. Hill. 3 Jac. Lathmer v. Avery.

2 Roll Rep. 178, Walter v. Bartlet, Trin. 18 Jac. B. R. the S. C. adjudged accordingly. —— Palm. 111. Trin. 17 Jac. B. R. Waldor v. Barkley, S. C. adjudg'd Una Voce. —— Cro. J. 573. pl. 1. Waldoe v. Bertlet, S. C. adjudged, Trin. 18 Jac. B. R. and upon a Caſe made thereof in the Court of Wards, it was adjudged by the two Ch. Juſtices and Ch. Baron, that the Copyhold remained &c. —— Jenk. 318. pl. 15. S. C. by the two Ch. Juſtices, and Ch. Baron.

4. A. *Copyholder for Life purchaſes the Fee*, which is conveyed *to Truſtees* and their Heirs, to the Uſe of A. during the Life of A. Remainder to the Wife of A. for Life, Remainder to A. in Fee. A. conveys the Remainder to his eldeſt Son in Fee; the Copyhold Eſtate for Life ſtill continues in A. and is not extinct or altered by the Purchaſe of the Fee which never was in him, but in the Truſtees only, till A. and the Truſtees conveyed the Remainder in Fee to the Son, ſo that a *Second Wife* of A. ſhall be intitled to her Cuſtomary Eſtate. Hob. 181. pl. 218. Howard v. Bartlet.

5. The Husband, who was Copyholder for Life of a Manor where the Cuſtom was, that the Wife ſhould have her Widow's Eſtate &c. *was attainted of Felony*. The Queſtion was, whether, after he was executed, the Widow ſhould have her Free-Bench? and Juſtice Winch, who was alone in Court, held that ſhe ſhould not, without a ſpecial Cuſtom, for that Purpoſe. Lex Maner'. 144, 145. cites Hill. 19 Jac. Allen v. Booth.

6. Where the *Husband* is *attainted of Treaſon*, the Wife does not loſe the Dower of her Copyhold Lands. Hard. 434. Hill. 18 & 19 Car. 2. in Scacc. Duke of York & al' v. Sir John Marſham, Baronet.

2 Vern. 585. per Cowper K. ſhe ſhall have it. Otway v. Hudſon & al'. —— Cited by the

7. A. was *admitted in Truſt for B.* to a Copyhold, and the Queſtion was, whether the *Widow of A. the Truſtee* did not come in Paramount the Truſt, and ſhould enjoy her Widow's Eſtate, and the Court at Law was divided upon it; cited 2 Vern. 46. pl. 41. Paſch. 1688. as the Caſe of Newbery v. Wighorn.

Maſter of the Rolls. 2 Wms's Rep. 644. Hill. 1732. in Caſe of Sutton v Sutton.

8. Copyholder for Life, where there is ſuch Cuſtom, *agrees that J. S. ſhould hold* and enjoy *during his Life, and the Widowhood* of ſuch Woman as he ſhould leave at his Death, and enters into Bond for that Purpoſe, and to Surrender on Requeſt. A Bill was brought by the Purchaſor

chaſor againſt the Widow, after the Copyholders Death, to bind her by this Agreement. The Bill was diſmiſſed with Coſts, for if ſuch Contracts for Copyholds ſhould be decreed, all Lords would be defrauded of their Fines &c. And put the Caſe, it one *Joint-Tenant agrees to alien, and dies* before it is done, it would be a Strange Decree to compel the Survivor to perform the Agreement. 2. Vern. 45. pl. 41. and 63. pl. 56. Paſch. 1688. Muſgrove v. Daſhwood.

(I. e) Guardian of Infants Copyholders. Who ſhall be.

1. IF a Copyholder dies, his Heir under the Age of 14, the next of Kin ſhall not have the Cuſtody of the Copyhold Land, for the *Right of appointing a Guardian* for them *de jure belongs to the Lord*, that ſo he may be ſure to have the Services done him; This is a particular Reaſon why the Lord ſhould have the Cuſtody *of the Lands* againſt the Common Rule for the Guardian in Socage; *But* the Reaſon not extending to the Cuſtody of the Body, it ſeems *the Guardian in Socage ſhall have the Body*. This Guardianſhip, ſays Coke, De Communi Jure belonging to the Lord, the *Copyholder cannot by his laſt Will and Teſtament appoint another Guardian*; Quære, whether at this Day, by Force of the *Statute* 12 *Car.* 2. *cap.* 24. the Deviſee of a Child ſhall have the Guardianſhip of the Child's Copyhold Lands; for the Words of the Act ſee the Statute at large. Gilb. Treat. of Ten. 311, 312.

(K. e) Infranchiſement. The Effects thereof, either as to the Land, or the Eſtates in it, or the Incidents to it.

1. IF the *Lord charges the Inheritance* of an Eſtate, which is granted by Copy for the Lives of A. B. and C. and the Cuſtom of the Manor is, that the firſt Named ſhall firſt enjoy, and then the 2d, and then the 3d, and the Lord by Deed inrolled bargains and ſells the Inheritance to A. A. ſhan't hold this charged during his Life; for the *mean Eſtates in Remainder* of B. and C. preſerve A's Eſtate by Copy from the Incumbrances of the Lord. 9. Rep. 104. 107. Paſch. 10 Jac. in Margaret Podger's Caſe.

If the Lord grants a Rent-charge out of the Inheritance of Copyhold Land, and then grants the Freehold and Inheritance to the Copyholder for Life, he ſhall hold the Land diſcharged during his Life. Gilb. Treat. of Ten. 235. cites S. C.

2. Debt againſt an Heir upon a Bond, and Riens by Deſcent in Fee pleaded, &c. and upon the Evidence the Caſe was, the Land was Copyhold, and by the Anceſtor an Intranchiſement of it was procured of the Lord, and the Freehold bought in &c. but *the Copyhold was entailed long before, and by Cuſtom ſuch Entails had been* &c. within the Manor of Leeds, where &c. and whether this Entail ſhall free the Iſſue, (for ſo the Heir here was,) or that the Copyhold ſhall be ſo extinguiſhed

ed by this Purchaſe, that it be wholly ſwallowed up, and that no Uſe can be made by the Iſſue of this old Entail was the Queſtion, and Thorpe Judge of Aſſiſe, thought *the Iſſue might make Uſe of the Entail.* Clayt. Rep. 138. pl. 249. Auguſt 1649. Bernard v. Simpſon.

3. If Intranchiſement *only alters* the Manner of the Tenant's Tenure, ſo as where the Lord was bound to *repair a Way Ratione Tenuræ*, the ancient Freehold and Copyhold Tenants are not liable to contribute; for Nothing is Part of the Manor but Demeſnes and Services, and not the Lands of the Tenants, and tho' the Copyholds are afterwards inſranchiſed, yet they are *not chargeable*, becauſe it only alters the Manner of the Tenure. Hardr. 131. Mich. 1658. in Scacc. Rich v. Barker.

Jeffries C. afterwards decreed for the Purchaſor, and declared, he thought the Purchaſor of the Freehold ſhould *attract* the other Eſtate which was but at Will.

4. A. Copyholder *to him and the Heirs Male of his Body purchaſed the Fee-Simple* to him and his Heirs, and afterwards, for 300 l. ſold the Land to the Defendant, who was in Poſſeſſion ſeveral Years; The Copyholder died, leaving Iſſue a Son; a Special Verdict was found at Common Law; The Queſtion is, if the Son has Right now? The Lord Chancellor was of Opinion for the *Purchaſor*, that the Conveyance was good againſt the Heir; For the Copyhold being Severed from the Manor, there is no Means to barr it but by Conveyance at Common Law; the Entail is not within the Statute of W. 2. but Ld. Chancellor took Time to adviſe. 2 Ch. Caſes. 174. Hill. 1 Jac. 2. Barker v. Turner.

Vern. R. 332. Parker v. Turner, S. C. —Ld. C. thought the Copyhold was *merg'd*, 458. S. C. — S.C. cited 3 Wms's Rep. 10. in the Notes, and ſays, Quære if A. be a Copyholder in Tail, Remainder to B. in Fee, and A. takes a Grant of the Freehold from the Lord to him and his Heirs, and dies without Iſſue, is not B. in whom there was once a veſted Remainder in Fee of the Copyhold Premiſſes, intitled to the ſame? — And Ibid in the principal Caſe, Trin. 1724. Dunn v. Green, Lord Chancellor held, that unleſs it be expreſsly found, that the Cuſtom of the Manor allows of Intails, then this is a Fee conditional, and plainly merg'd by the Grant of the Freehold in Fee; but ſuppoſing the Cuſtom of the Manor does warrant Intails, yet the Copyhold is extinguiſhed; becauſe, in the Eye of the Law, that is but an Eſtate at Will, and muſt be merged by the Grant of the Freehold. The Premiſſes by ſuch Grant are ſevered from the Manor, conſequently the Cuſtom of the Manor cannot corroborate the legal Eſtate at Will. The Copyholder cannot hold of himſelf, and the Copyhold, though intailed, is ſwallowed up in the greater Eſtate of the Freehold; and as the Tenant, after ſuch Time as he took the Grant, did not himſelf continue a Copyholder, ſo his Son, on the Deſcent of the Freehold, is likewiſe no Copyholder, which may be ſaid from Son to Son ad infinitum; Moreover, if the Intail of the Copyhold be not extinguiſhed, it will be a Perpetuity, ſince the only proper way of barring the Intail of a Copyhold is by Recovery in the Lord's Court, but after ſuch Severance, as in the preſent Caſe, no Recovery can be ſuffered in the Lord's Court.

2 And 168. Worledge v. King's-well.—— But whether this was

5. Copyholder purchaſed the Freehold *with all the Commons belonging*, yet the *Common is extinct*; But if the Word *Grant be in the Deed*, if 'tis Pleaded by way of Grant it is good. Cumb. 127. Trin. 1 W. & M. in B. R. Speaker v. Styant.

Common in Groſs, or Common Appurtenant, it was not reſolved. Ibid. 170.——Though the Words (Cum Pertinentiis) will not paſs the Common, yet if the Grant be, *with all Commons before uſed*, it will paſs. Bulſt. 2. Marſham v. Hunter. —— Though it be extinct at Law, yet it ſubſiſts *in Equity*. 2 Vern. 160. Styant v. Staker.

Freem. Rep 273. pl. 300 S. C. but on a different Point.

6. The Lord leaſes a Coal-mine for 99 Years, and *grants a Way* over Copyhold Lands in Fee, which was not a Way of Right, or of Neceſſity. The Copyholder purchaſes the Freehold and Inheritance of it, by which the Copyhold was extinct; Whether by this the Grant of the Way in the Leaſe of the Coal-mine may *Co-operate* as well as if the Locus in Quo had been in the Hands of the Lord at the Time of making the Leaſe? This was adjourned to be argued, but never was, the Matter being compounded. 2. Lutw. 1248. Hill. 11 W. 3. Dixon v. James.

7. By

7. By Infranchiſement of his Copyhold Eſtate *Common in the Waſtes* of the Lord *out of the Manor* is not *extinct*, but Common in the Waſtes of the Lord *within the Manor* is thereby extinct. 1. Salk. 170. pl. 3. Hill. 4 Ann. B. R. Crowder v. Oldfield. 1 Salk. 366. S. C. —— 6 Mod. 20. S. C. per Holt Ch. J. the Common belongs not to the Land, but to the Copyhold Eſtate.

(K. e. 2) Infranchiſement. Equity.

1. *Husband and Wife, Jointenants for Life, Remainder in Fee to the Wife.* The Husband purchaſes the Freehold, and takes the Conveyance *to himſelf and his Wife, and their Heirs.* The Husband dies. The Wife ſurrenders to the Uſe of a Daughter by a former Husband; And decreed accordingly againſt the Heir. 2 Vern. 164. cites Feb. 22. 1675. Croſt v. Lyſter.

2. Copyholder in Fee takes an Infranchiſement of his Copyhold *in the Name of a Truſtee*, and then *deviſed it* to a younger Son, who ſells it to J. S. The Heir at Law recovered in Ejectment, (as he might do upon his Anceſtor's Admittance.) On Bill by J. S. it was inſiſted, that that the Eſtate purchaſed of the Lord was purely an Eſtate in Equity, according to **Smith and Burrin's Caſe**, 4 Rep. 24. b. and that the Diſpoſition of the Fee to the Purchaſor, was a Diſpoſition of the whole Eſtate that the Copyholder had, either in Law or Equity; and decreed accordingly; per Finch C. And affirmed on Bill of Review, per Jeffries C. Vern. 392. pl. 364. Hill. 1685. Dancer v. Evett.

3. Lord of a Manor *infranchiſes a Copyhold with all Commons* thereto belonging. Decreed, that Plaintiff enjoy the ſame Right of *Common* as belonged to the Copyhold, and Coſts againſt the Defendant. 2 Vern. 250. pl. 236. Hill. 1691. Styant v. Staker.

(L. e) Jointenants, and Tenants in Common.

1. TWO *Jointenant in Common* of a Manor; a *Court is ſummoned by one* without his Companion; it is a void Summons. D. 377. Marg. pl. 28. cites 27 Eliz. Henleſton's Caſe.

2. *If* in that Caſe *the Copyholder*, who made the Surrender, *had died before the ſame had been preſented*, then the Copyhold had ſurvived to the ſurviving Jointenant. Supplement to Co Comp. Cop. 69 S. 3.

3. If a *Surrender* be made of a Copyhold *to the Uſe of a laſt Will*, and the *Surrenderor deviſes it to two*, the *one is admitted according* to the Purport of the Will, this ſhall *enure to both*. Co. Comp. Cop. 50. S. 35. Gilb. Treat. of Ten. 312, 313. S P. For when he is admitted he is in by the Surrender, which he cannot be unleſs he be a Jointenant; for that is his Title by the Surrender.

4. Two Jointenants, Copyholders in Fee; *one Surrendred into the Hands of the Tenants, to the Uſe of his Will*, and makes his Will of the Land, and dies; Reſolved, that this *Surrender ſhould bind the Survivor*, for being prevented, it ſhall relate to the firſt Time of the Surrender and Co. Litt. 59. b. S P. accordingly, the Surrender being

and Judgment accordingly. Cro. J. 100. pl. 30. Mich. 3 Jac. B. R. Porter v. Porter.

presented at the next Court, the Jointure was ſever'd, and the Deviſee ought to be admitted to the Moiety of the Land. —— Gilb. Treat. of Ten. 259. cites S. C.

5. One Jointenant Copyholder *releaſed* to his Companion; Adjudged to be good without Surrender and Admittance; for per Hobart Ch. J. the firſt Admittance is of them and every of them, and the Ability to releaſe was from the firſt Conveyance and Admittance. Winch. 3. Paſch 19 Jac. Waſe v. Pretty.

And cited it as adjudged 26 Eliz. in Platt's Caſe. and ibid. cites 3 Car. in Simpſon's Caſe. —— Supplement to Co. Comp. Cop. 69. S. 3. cites S. C.

6. Two Coparceners Copyholders in Poſſeſſion, *one Surrendered his Reverſion in the Moiety after his Death.* 'Twas moved, that nothing paſſed, becauſe he had nothing in Reverſion, and cited 5. Rep. Saffin's Caſe; 2dly, That it is not good after his Death, and cites it as adjudged 2. Rep. Buckley v. Harvey; Per Cur. the Surrender is void, and it is all one in Caſe of Copyhold as of Freehold. Godb. 451. pl. 518. Paſch. 10 Car. B. R. Barker v. Taylor.

7. A Man *Surrenders* Copyhold Land to 2, *equally to be divided*, they are Jointenants; But ſuch a *Deviſe* would have made them Tenants in Common; Per Twiſden. J. Arg. Vent. 376. Trin. 26 Car. 2. B. R.

Cites 1. Inſt. 59. b. ——Cro. J. 100. Porter v. Porter.—— Brownl. 127. S. P. in Caſe of Allen v. Naſh ——

8. If there are 2 Jointenants of a Copyhold, and *one ſurrenders* out of Court *to the Uſe of his Will*, and deviſes his Moiety to a Stranger, and dies, and afterwards this Surrender is preſented at the next Court &c. the Deviſee ought to be admitted; for by the Surrender and Preſentment the *Jointure* was *ſevered*, for the Land was bound by the Surrender by way of *Relation*. 4. Mod. 254. Hill. 5 W. & M. in B. R. in the Caſe of Benſon v. Scott.

S. P. cited per Coke. Ch. J. as adjudg'd. Noy 142. in Caſe of Allen v. Naſh.

(L. e. 2) The King. In what Caſes the King ſhall have Copyhold Lands.

1. THE King ſhall not have the Cuſtody *of an Ideot's* Copyhold Lands, for it is but Eſtate at Will by the Common Law, and his having the Cuſtody would be great Prejudice to the Lord of the Manor. 4 Rep. 126. b. Paſch. 1 Jac. B. R. in Beverley's Caſe.

2. *Alien purchaſes Copyhold* Land; He cannot retain it, nor ſhall the King have it, but the Lord of the Manor. D. 302. Marg. pl. 46. ſays, that Hariſon, in his Reading in Lincoln's-Inn, 1632. cited it as ſo reſolv'd.

3. H. *purchaſed a Copyhold in Fee, in Truſt for an Alien*, and upon an Office found, *the King ſeiſed to have the Profits anſwer'd to him*, the Court held, that they were not ſeizable, neither was the Truſt forfeited to him, and an Amoveas Manum was granted, becauſe the Lord would loſe his Fine and Services; beſides, it may be prejudicial to a Stranger, who may claim a Title to this Copyhold, and if it was not in the King's Hands, might ſue for it in the Lord's Court, but the King cannot be ſued there

there, and the *King cannot be a Tenant at Will, and conſequently not a Copyholder*; Per Hale Ch. B. Hardr. 435, 436. Hill. 18 & 19 Car. 2. in Scacc. cites 16 Car. The King v. Holland.

(M. e) Leaſes by the Cuſtom, and without; and who bound by them.

1. A *Cuſtom that a Lord of Cuſtomary Land* per Cuſtom *may let this for Life, and* 40 *Years over*, is good, *but a Cuſtom that a Leſſee for Life may leaſe pur auter Vie* is not good. Mo. 8. pl. 27. Hill. 3 E. 6. Anon.

2. If *Tenant in Tail leaſes a Copyhold by Indenture, rendring the ſame Rent as before*, it is a good Leaſe within the Statute 32 H. 8. per Cur. Cro. J. 76. pl. 6 cited as ruled 7 Eliz. in Sir Ja. Mervin's Caſe.

3. It was Reſolved by the Juſtices, That a *Cuſtom, that a Leſſee for Years may hold the Land for half a Year after his Term ended*, is no good Cuſtom; But it was agreed, That the *Lord of a Copyhold might by Cuſtom leaſe the ſame for Life and* 40 *Years after*, and that ſuch a Cuſtom was good. Co. Comp. Cop. 85. S. 19. Mo. 8. pl. 27 Hill. 3 E. 6. Anon. S. P. as to the firſt part agreed by all the Juſtices and the laſt Point agreed by Mountague and Hales, but that a Cuſtom that a Leſſee for Life may leaſe for another's Life is not good.

4. *Copyholder for Life ſurrendred to K. the Lord of the Manor in Tail, the Reverſion in the Crown. K. made a Leaſe for three Lives*, the Leaſe *to begin from the Day of the Date, and the old Rent was reſerv'd, and more.* It was reſolv'd by the Juſtices, that it was a good Leaſe within the Statute of 32 H. 8. if Livery was made after the Day of the Date. Mo. 759. pl. 1050. Paſch. 3 Jac. C. B. Banks v. Brown. Noy 110. S. C.

5. If a *Copyholder without Licence* of the Lord *makes a Leaſe for Years*, the *Leſſee that enters by Colour thereof is a Diſſeiſor*, and therefore cannot maintain an *Ejectment*; and the Defendant cannot plead that the Plaintiff by Licence did not demiſe, for this is a Negative pregnant. 2 Brownl. 40. Hill. 8 Jac. C. B. Petty v. Evans. If a Copyholder demiſes Lands for three Years without a Cuſtom or Licence, he ſhall be taken for a Diſſeiſor; Per Opinionem Curiæ. Brownl. 133. Paſch. 8 Jac. Cramporn v. Freſhwater ——2 Keb. 598. Arg. ſays, that the Leaſe of a Copyholder is no Diſſeiſin, though it be a Forfeiture, nor does it alter the Eſtate of the Lord. Hill. 21 & 22 Car. 2. B. R.

6. A. ſeiſed in Fee ſurrendered to the Uſe of B. and his Heirs, into the Hands of two Tenants, according to the Cuſtom, to be preſented at the next Court, and *and no Court was held in* 30 *Years* after, and before any was held, *Surrenderor and Surrenderee, and both Tenants, died.* The *Heir of Surrenderor* entered, and made a Leaſe for Years of the Copyhold according to the Cuſtom of the Manor, and adjudged, that the Leaſe was good. Godb 268. pl. 372. Mich. 14 Jac. B. R. Anon.

7. *Infant Copyholder* makes Leaſe for Years, this is no Forfeiture; nevertheleſs, as to a Stranger, he continues Leſſee for Years, tho' the Lord may ſeiſe for a Forfeiture, and tho' he was *admitted* by the Lord, yet this does *not avoid* the Leaſe, therefore his Acceptance at full Age is good, and ſhall bar the Infant, as if it was a Leaſe of Lands at Common Law; Reſolved and affirmed, becauſe Leaſe of a Copy- Lat. 199. S. C. —— Godb. 364. S. C. —— Nov 92. S. C —— Leaſe for

Years by Copyholder is good againſt all but the Lord.

Copyhold for Years, tho' it is a *Forfeiture* in regard to the Lord, yet ſhall be *good as to Strangers*. Jo. 157. Paſch. 3 Car. B. R. Aſhfield v. Aſhfield.

Cro. E. 535. pl, 68. Goodwick v. Longhurſt.——676. Sparke's Caſe.—— Cro. C. 304 per Gawdy and Fenner J. and that there is no Difference where the Manor is the King's, or a Common Perſon's; But Clench J. denied it, and Popham ſaid nothing. Cro. E. 492. pl 8. Hill. 38 Eliz. B. R. in Caſe of Haddon v. Arrowſmith.——Gilb. Treat. of Ten. 276, 277. cites S. C. of Aſhfield v. Aſhfield, and ſays, that it ſeems the Lord may enter for the Forfeiture during the Nonage, and need not ſtay to ſee whether the Infant will accept the Rent or no, for the particular Prejudice done to the Lord, and if he ſhould ſtay his Acceptance of Services from the Infant, in the mean time it would be a Diſpenſation for the Forfeiture; but then the Infant, at his full Age, by diſagreeing to the Leaſe, may avoid the Forfeiture.

Gilb. Treat. of Ten. 277. cites S C. as adjudg'd good.

8. A *Cuſtom, that on Payment of* 10 *Years Rent the Lord ſhould Licence to let for* 99 *Years, and that if he refuſed, the Tenant might do it without* Licence, was adjudged good; cited by Moreton, as in the Caſe of Grove v. Bridges. 2. Keb. 344. in pl. 18. Paſch. 20 Car. 2. B. R.

(N. e) Leaſe by Licence, and without. Good. And How it Operates.

Cro. E. 462 pl 8. S.C. & S. P. per Popham and Fenner. ——Popham 105, 106. S. C. and agreed that a Licence to leaſe the Copyhold cannot be made void by a Condition Subſequent to the Execution thereof to undo what was once well executed; But a Condition precedent may be united to it, becauſe in ſuch Caſe it is no Licence till the Condition is perform'd.——If by the Cuſtom a Copyholder may only make a Leaſe for one Year, and he is licenced to leaſe for Ninety Nine Years, it was doubted, whether he ſhould *aſſign his Licence or make an Under-Leaſe*; and held he might becauſe the Lord's Intereſt was bound for 99 Years. 12 Mod 230. in C. B.

1. A *Condition to a Licence* is void; as a Licence to make a Leaſe for Years, on Condition that he pay 20 l. the 2d. Year; for the Lord gives nothing by the Licence, but only diſpences with the Forfeiture, and the Leſſee is in by the Copyholder and not by the Lord, tho' *Licence does not give a Right, but only executes it as a Livery or Attornment*. Per Popham and Fenner Juſtices. Ow. 73. Hill. 38 Eliz. in Caſe of Haddon v. Arrowſmith.

Gilb. Treat. of Ten. 280. cites S. C.

2. A *Licence* was granted *to let* the Lands *for* 21 *Years* to commence *from Mich. laſt paſt*; The *Copyholder made a Leaſe for* 21 *Years to commence from Chriſtmas next following*; adjudg'd, that this Leaſe was not warranted by this Licence. Cro. Eliz. 394. pl. 21 Paſch. 37 Eliz. C. B. Jackſon v. Neale.

3. Tenant at Will can't by any Cuſtom make a *Leaſe for Life by Licence of the Lord*, and there can't be any ſuch *Cuſtom* for a Leaſe for Life as there is for Years; Per 3 Juſtices. Godb. 171. pl. 236. Paſch. 8 Jac. C. B Anon.

4. If the Lord grants *Licence* to his Copyholder *to demiſe*, and *he demiſes it by Indenture, it is the Leaſe of the Copyholder, and not of the Lord.* Hob. 177. pl. 203. Hill. 14 Jac. in Caſe of Swinnerton v. Miller.

Litt. Rep. 233. 235. S. C. & S. P by Hutton J. ——Hetl. 128 S. C. & S. P. by Hutton J.

5. If a Copyholder makes a Leaſe for 20 Years with the Licence of the Lord, and after *dies without Heirs*, yet the Leaſe ſhall ſtand againſt the Lord by reaſon of his Licence, which amounts to a Confirmation. Hutt. 102. per Cur. Mich. 4 Car. in Caſe of Turner v. Hodges.

S. P. by Yelverton J. contra Hutton J. Poph. 188. Mich. 2 Car B. R. Anon.——So it the

the Copyholder ſhould forfeit his Eſtate, the Leaſe perhaps would ſtand good againſt the Lord, the Demiſe being by Licence; per Cur. Hob. 177. pl. 203.——S. P. Arg. Palm. 384.——2 Roll Rep. 372. Arg. S. P.

6. The *Lord agreed* with his Copyhold Tenant *to grant a Licence to let* his Eſtate for as long Time, and in as large a Manner as had been formerly granted to his Father or Mother, and 300 l. was paid him for it. The Agreement was proved, and Defendant confeſſing he had granted a Licence to the Plaintiff's Mother to let it *for* 60 *Years*, decreed he ſhould Grant the like Licence now. N. Ch. R. 49. 1650. Hungerford v. Auſten.

7. If the Copyholder make a Leaſe for Years by the Lords Licence, the *Leſſee may Aſſign over his Leaſe, or make an Under-Leaſe* for Years, *without any new Licence*; for the Lord's Intereſt is diſcharged for ſo many Years. Gilb. Treat. of Ten. 282.

(N. e. 2) Licence to let. Pleadings.

1. A Copyholder cannot make a Leaſe for Years unleſs by Cuſtom, or by *Licence* of his Lord, which *ought ſpecially to be ſhewn*; Per Cur. Cro. E. 728. pl. 5. Mich. 41 & 42 Eliz. C. B. Kenſey v. Richardſon.

2. In *Ejectment* brought by Leſſee of a Copyholder, it is ſufficient that the *Declaration be general* without any Mention of the Licence, and if the Defendant plead Not Guilty, then the Plaintiff ought to ſhew the *Licence in Evidence*; But if Defendant plead ſpecially, then the Plaintiff ought to plead the Licence certainly in his *Replication*, and to ſhew what Eſtate the Lord had, and the Time and Place when it was made; for the Licence is *traverſable*. 2 Brownl. 40. Hill. 8 Jac. C. B. Petty v. Evans.

3. *In Ejectment* by Leſſee of a Copyholder it *ought to appear what Eſtate the Lord had*; for he cannot give Licence to make a Leaſe for longer Time in the Tenancy than he had in the Seigniory; and if the Lord be only Leſſee for Life of the Manor, by the Death of him the *Licence is determined*, though the Copyholder be of Inheritance thereby. 2. Brownl. 40. Hill. 8 Jac. C. B. Petty v. Evans, als. Debbans.

(N. e. 3) Lord of a Manor's Power as to determining Diſputes between Copyholders.

1. A Copyholder doth *ſurrender to the Uſe of one A. upon Truſt that he ſhall hold the ſaid Land until he hath levied certain Monies, and that afterwards he ſhall ſurrender to the Uſe of B.* The *Monies are levied.* A. is required to make Surrender to the Uſe of B. but A. refuſes. B. exhibits a Bill to *the Lord* of the Manor againſt the ſaid A. who, upon hearing of the Cauſe, *decrees againſt A. that he ſhall ſurrender; but A. refuſes*; Now *the Lord may ſeiſe, and admit B.* to the Copyhold, for

Supplement to Co Comp. Cop. 80. S. 14 cites S. C. —— Gilb. Treat. of Ten. 262 cites S. C. accordingly.

ſor he in ſuch Caſes is Chancellor in his own Court, per tot. Cur. Le. 2. pl. 2. Hill. 25 Eliz. B. R. Anon.

2. If a *Falſe Judgment* be given *in a Court Baron by the Steward againſt a Copyholder*, the Copyholder, in ſuch Caſe, ſhall not have either a Writ of Error, or a Writ of Falſe Judgment; but *he may ſue in the Court of the Lord by Bill*, to be relieved againſt ſuch Judgment, and the Lord, as Chancellor, may give him Relief therein, and ſhall reſtore the Land to the Party upon the Falſe Judgment given by the Steward, and Reſtitution made to the Copyholder. Supplement to Co. Comp. Cop. 80, S. 14. cites 14 H. 4. 34.

Vern. 367. pl. 360. Hill. 1683. in Chancery Aſh v. Rogle, and the Dean and Chapter of St Paul's, S. C. the Defendant Rogle demurr'd; the Dean and Chapter anſwer'd the Bill, and ſubmitted to do as the Court ſhould direct. The Demurrer was allow'd by the Maſter of the Rolls, and afterwards argued again before Lord Chancellor, who was of the ſame Opinion, and confirmed the Maſter of the Rolls's Order; and both of them ſeverally declared it would be of dangerous Conſequence, and contrary to Equity, to give any Relief in ſuch Caſe; And yet the Errors aſſign'd by the Bill in the Recovery were ſuch as would have been groſs Errors in a Recovery of a Freehold Eſtate; And Lord Chancellor ſaid, if there had been an Error in any adverſary Proceedings in the Lord's Court, this Court would have ordered the Lord to proceed and examine it; and told them, that they might try the Common Law Courts, whether they will grant him a Mandamus, but that he ſhould have no Aid from Chancery.——2 Chan. Rep. 287. S. C.

3. *Appeal from a Decree of Diſmiſſion* made by the Lord Jeffrey's; the *Bill* was, *to compel the* Dean and Chapter, as *Lord of the Manor, to receive a Petition in Nature of a Writ of Falſe Judgment for reverſing a Common Recovery* ſuffered in the Manor Court, in 1652. *whereby a Remainder in Tail, under which the Plaintiff claimed, was barred, ſuggeſting ſeveral Errors* in the Proceeding therein; and that the ſaid Lord might be commanded to examine the ſame, and do Right thereupon. It was further urged, that there was no Precedent to enforce Lords of Manors to do as this Bill deſired; that *the Lords of the Manors are the ultimate Judges of the Regularity or Errors in ſuch Proceedings*; that there is no Equity in the Prayer of this Plaintiff, that if the Lord had received ſuch Petition, and was about to proceed to the Reverſal of ſuch Recovery, Equity ought then to interpoſe and quiet the Poſſeſſion under thoſe Recoveries; that Chancery ought rather to ſupply a Defect in a Common Conveyance (if any ſhall happen) and decree the Execution of what each Party meant and intended by it, much rather than to aſſiſt the annulling of a ſolemn Agreement executed according to Uſage, tho' not ſtrictly conformable to the Rules of Law; for which Reaſon it was prayed, that that Appeal might be diſmiſſed, and the Diſmiſſion below confirmed, and it was accordingly adjudged ſo. Show. Parl. Caſes 67. 69. Smith v. Dean and Chapter of Paul's (London,) and Rugle.

(N. e. 4) Copyholder Lunatick, Ideot &c.

1. IT was clearly agreed by the Counſel of the *Court of Wards*, that a Copyholder, who is an *Ideot*, ought not to be ordered in this Court for his Copyhold, but it ſhall be done in the Court of the Lord of the Manor. D. 302. b. 303. a. pl. 46. Trin. 13 Eliz. Anon.

Gilb. Treat. of Ten. 209. ſays, that the Lord ſhall not have the Cuſtody of Lunatick Perſons Lands, unleſs their be a Cuſtom for it; Neither ſhall the King have it for the Prejudice that would enſue to the

2. A *Copyholder was Deaf and Dumb*; the *Committee of the Lord of the Manor, who was in Ward, granted the Cuſtody of that Copyhold Land to another, who entred*, and the Prochein Amy of the Copyholder entred upon the Grantee; Adjudged, that the Lord ſhall have the Cuſtody; For otherwiſe he might be prejudiced in his Rents and Services, and his Grant was good. Cro. J. 105. pl. 43. Mich. 3 Jac. Eavers v. Skinner.

tne Lord.——Ibid. 290. ſays it was held by Hobart, that the Lord of a Manor hath not the Cuſtody of a Lonatick's Land de Communi Jure, but there *muſt be a Cuſtom to warrant it.*——Hob. 215 pl. 278. Hill. 15 Jac. S. P. by Hobart Ch. J. For the Imitation ofthe King's Power over Freeholds makes no Conſequence ; For though he took the Statute to be only an Affirmance of the Common Law, in Caſe of the King, yet the collateral Incidents of Eſtates, As Dower, Tenancy by the Curteſy, Wardſhips &c. are not without ſpecial Cuſtom.——Gilb. Teeat. of Ten. 290, 291. cites the principal Caſe of Ewers v. Skinner, where no Cuſtom was laid, and the Queſtion was, between the Prochein Amy and the Lord; and the Reaſon given why the Lord ſhould have the Cuſtody is, becauſe otherwiſe he would be prejudiced in his Rents and Services, which Reaſon extends as well where there is no Cuſtom as where there is ; and if the Cuſtody of one that is Mutus & Surdus of Common Right belongs to the Lord, by the ſame Reaſon of one that is Lunatick ; Ideo quære.

3. *Copyholder for Life becomes Lunatick*, and *A. his Couſin ſows his Land*; atterwards the *Lord grants the Cuſtody of the Lunatick to B. A. takes the Corn to the Uſe of the Lunatick*, and *B. brought an Action of Trover and Converſion* in his own Name. It was ſaid by the Court, that it was ill brought, for he ought to have brought it in the Name of the Lunatick. The ſecond Opinion of the Court was, that as this Caſe ſtood, neither the Lord nor the Committee have any thing to do to meddle with the Corn. Noy 27. Hill. 13 Jac. C. B. Cox v. Dawſon. Hutt. 16, 17. Paſch. 16 Jac. Anon. The Opinion of the Court was, that the Committee was but as Bailiff, and had no Intereſt, but for the Profit and Benefit of the Lunatick, and as his Servant, and it is contrary to the Nature of his Authority to have an Action in his own Name ; For the Intereſt, and the Eſtate, and all Power of Suits is remaining in the Lunatick.

4. The *Lord* of a Manor *has no Power to diſpoſe of the Copyhold of a Lunatick without ſpecial Cuſtom*, no more than a Man ſhall be Tenant by the Curteſy &c. of a Copyhold without Cuſtom, nor the Lord cannot commit during the Minority of an Infant Copyholder without Cuſtom ; Agreed per tot. Cur. Hutt. 17. Paſch. 16 Jac. Anon.

5. Lord of a Manor having a Copyholder, a Lunatick, in his Cuſtody, grants over the Cuſtody to another, who brings an Action in his own Name. It was held not to be well brought ; for the Committee has no Intereſt, but only a bare Cuſtody, and therefore the *Action ought to be brought in the Lunatick's Name* ; and by the ſame Reaſon, the Lord himſelf could not bring an Action in his own Name ; for if he had Intereſt himſelf, he might have aſſigned it over. This being a bare Cuſtody, the Grant by the Lord could be no Infranchiſement of the Lands. Gilb. Treat. of Ten. 290.

(O. e) Mortgages and other Charges. How they ſhall affect a Copyhold.

1. IF *Tenant by the Curteſy*, or Tenant *for Life*, *or for Years*, *be of a Manor*, and *a Copyhold comes into his Hands*, *either by Forfeiture*, *or other Determination*, and then *he becomes bound in a Statute Staple or Merchant* and afterwards *demiſes this Copyhold again*, it ſhall be liable to the Statute, becauſe it was once annexed to the Frank-tenement of the Lord, and liable in his Hands ; But if a Copyholder binds himſelf in a Statute, his Lands ſhall not be extended, becauſe he has only an Eſtate at Will ; And this Diverſity was ſaid to be agreed in C. B. Mo. 94. pl. 233. Paſch. 12 Eliz. Anon.

2. A. *Mortgaged Freehold and Copyhold* Lands to B. and A. *agreed to to ſurrender the Copyhold*, *but died before* it was done. Decreed, that the Heir of A. when of Age, ſhall make a ſufficient ſurrender Niſi Cauſa A Surrender was decreed when the Mortgage

was of the Copyhold by Deed, and no Agreement to ſurrender.

Cauſa within 6 Months after his attaining 21. Fin. R. 272. Mich. 28 Car. 2. Pattiſon v. Tompſon.

Fin. R. 331. Keen v. Sparrow.

There has been generally practiced in moſt Copyhold Manors, that upon the *Mortgage* of a Copyhold the Mortgager ſurrenders into the Hands of 2 Cuſtomary Tenants, to the Uſe of the Mortgagee, upon Condition to be Void, if the Money be paid at ſuch a Day; Now to avoid the Fine to the Lord, the *Uſual way is not to preſent the ſurrender at the next Court, but* after the Court is over, *to make a new Surrender* into the Hands of two Cuſtomary Tenants, ut ſupra *and ſo from Time to Time*, as often as any Court ſhall be holden; which *Non-preſentment* is at Law a Forfeiture, and to be relieved againſt this Forfeiture was a Bill exhibited, which North Lord Keeper denied to help, but left them to the Common Law. Skin. 142. pl. 13. Mich 32 Car. 2. in Chancery.

3. Copyholder of Inheritance makes a *Mortgage ſurrender for 6 Months*, the Money *not paid*, but Mortgagee conſenting to continue his Money, and take a new ſurrender, the Lord inſiſted on *Admittance of Mortgagee*, and to pay a *Fine for the two Years Value*; the Court would make no Decree in Favour of the Mortgagee, but only to try it at Law, (if he thought fit) if the Lord by the *Cuſtom* of the Manor was bound to renew the Surrender to accept the 2d. if not (though a hard Caſe) yet was not be relieved in Equity. The Matter was after ended by Compromiſe, and a Fine of 40 l. paid to the Lord, the Eſtate being 100 l. per Annum. 2 Vern. 367. pl. 330. Mich. 1699. Treadway v. Fotherly.

Chan Prec. 237. pl. 199. Acton v. Acton S C. A Man before gives Bond to the Woman to leave her a 1000 l. and then marries her, and dies inteſtate, and his Eſtate both Free and Copyhold being all in Mortgage, ſhe takes out Adminiſtration, and on a Bill againſt the Heir and Mortagee let into a Redemption of the whole, tho' the Bond was releaſed and gone at Law by the Intermarriage, and tho' the Copyhold not affected by the Bond, it being in Nature of a Marriage Agreement.

4. Though a *Bond* will not bind a Copyhold Eſtate, yet where there is *Freehold and Copyhold in the ſame Mortgage*, decreed the Plaintiff (who was a Creditor by Bond given her by her Baron, before Marriage to leave her 1000 l.) to redeem and hold over. 2 Vern. 408. pl. 436. Hill. 1704. Acton v. Pearce, Saxby, & al'.

5. A. made a Mortgage of all that Meſuage called Biſhops, with *all the Land* therewith uſed, and enjoyed, or reputed Part or Parcel thereof, or *whereof any in Truſt for him were ſeiſed*. Biſhops Meſuage and Lands were Freehold. But A. had a Right to 8 Acres of Copyhold, but the legal Eſtate was in J. S. Per Cowper C. here is *no ſpecifick Agreement* for the Copyhold, and took it, that nothing was intended to paſs but the Freehold, and affirmed the Decree made before. 2 Vern. 636. pl. 564 Hill. 1708. Oxwith v. Plummer.

6. *Bill by the Heir* of the Mortgagor *to redeem a Mortgage of Copyhold Lands upon Payment of Principal and Intereſt due* upon the Mortgage, the *Default inſiſts to have a Judgment which he had aſſigned to him, firſt ſatisfied* before the Plaintiff ſhould be let in to redeem. Curia, Copyhold Lands are not liable to an Execution upon a Judgment, and therefore the *Judgment ſhall not be tack'd to the Mortgage* in this Caſe, but the Plaintiff ſhall redeem upon Payment of what is due for Principal, and Intereſt, and Coſts, upon the Mortgage, without ſatisfying the Judgment; Per Harcourt C. MSS. Rep. Paſch. 13 Ann. Canc. Heir of Cannon v. Pack.

(P. e) Preſcription by Copyholders. Good; and How.

1. A Copyholder ſhall *preſcribe by Uſitatum eſt againſt his Lord*, but againſt a *Stranger* he ſhall preſcribe *in the Name of the Ld.* Per tot. Cur. Mo 461. pl. 646. Hill. 29 Eliz. Perry's Caſe.

2. A Copyholder preſcribes, that every Copyholder *of ſuch a Parcel of Wood had uſed* to cut down Trees there growing, and held good; And a Difference was taken between a Preſcription for *Freehold and* for *Copyhold* Land; For *Cuſtom*, which concerns Freehold, ought to be throughout the County, and cannot be in a particular Place; But a Preſcription concerning Copyhold Land, is good in a *particular Place*; For De Minimis non curat Lex, and the Law is not altered thereby, and it may be there is but one Copyholder there for which he might Preſcribe; And Cuſtom to have *Profit, Apprender, Privilege, or Diſcharge*, may well be in a Particular. Cro. E. 353. pl. 10. Mich. 36 & 37 Eliz C. B. Taverner v. Ld. Cromwell. 4 Rep. 27. a b pl. 15. Trin. 26 Eliz. S. C. but S. P. does not appear. — 3 Le. 107. pl. 158. S. C. but S. P. does not appear.

3. Copyholder lays a Preſcription in the Bp. of W. Ld. of the Manor for himſelf and his Tenants to be diſcharged of Tythes, and then preſcribes for the Copyhold; tho' here is a *Preſcription upon a Preſcription*, one in the Copyholder to make his Eſtate good, and the other the Lord to make his Diſcharge good, yet adjudg'd by 3 Juſtices, but Popham e contra, that Prohibition lay for the Copyholder. Yelv. 2. Paſch. 44 Eliz. B. R. Croucher v. Fryar. Cro. E. 784. pl. 23. S. C. adjudg'd accordingly; For all Copyholds are deriv'd out of the Manor, and it ſhall be intended that this Preſcription and its Commencement at ſuch Time when all was in the Lord's Hands; And the one Preſcription is not contrariant to the other, tho' both were from Time whereof &c. For the one ſhall give Place to the other. ——— Gilb. Treat. of Ten. 292. cites S. C. ——— Mo. 618. S. C. the Court were at firſt divided in Opinion, but afterwards it was adjudged by three Juſtices, contra Popham, for the Plaintiff in the Prohibition, viz. that the Preſcriptions may ſtand together.

4. A *Cuſtom* which goes in Maintenance and making of a Copyhold Eſtate ſhall be *taken favourable*; Per Popham. Cro. E. 879. pl. 10. Paſch. 44 Eliz. in Caſe of Baſpool v. Long.

5. If Tenants of a Manor will preſcribe *to hold without paying any Rents or Services* for their Copyholds, this is no good Cuſtom, *but to preſcribe to hold by Fealty for all Manner of Services*, is good and reaſonable. Calth. Reading. 29.

6. If the *Lord* will *preſcribe never to hold a Court but when it pleaſes himſelf*, this is not good; *But* to preſcribe *never to hold a Court for the ſpecial good of any one Tenant, except the ſame Tenant will pay him a Fine for the ſame*, is good and allowable. Calth. Reading. 29.

7. If the Lord will preſcribe *to have* of his Copyholders *in the Time of Peace, 2d. an Acre of Rent, and in the Time of War 4d. an Acre* of Rent, this is good Preſcription, becauſe there is a good Conſideration of the Cauſe of this uncertainty; but to pay unto the Lord *2d. an Acre Rent when he will, and 4d. an Acre Rent when he will*, this is no good Preſcription, becauſe there is neither good Reaſon nor Conſideration hereof, nor can it ever be reduced into any Certainty. Calth. Reading. 32.

8. If the Lord will preſcribe *to have of every of his Copyholders for every Court that ſhall be kept upon the Manor, a certain Sum of Money*, this is no Preſcription according to common Right; becauſe he ought for Juſtice-Sake to do it Gratis. Calth. Reading.

9. If

9. If the Lord will preſcribe *to have a certain Fee of his Tenants for any extraordinary Court purchaſed, only for the Benefit of one Tenant*, As for one Tenant to take his Copyhold, or ſuch like, this is a good Preſcription, according to the common Right. Calth. Reading, 34.

10. If the Lord will *have of any of his Tenants that ſhall commit a Pound-Breach*, 100 *s.* for a Fine, this is good Preſcription, but to challenge of every Stranger that ſhall commit a Pound-Breach 100 s. this is no good Preſcription. Calth. Reading. 34.

11. If the Lord will preſcribe, *that every of his Copyholders*, within his Manor, *that ſhall marry his Daughter without Licence, ſhall pay a Fine* to the Lord, this is no good Preſcription according to common Right. Calth. Reading, 34.

12. If the Lord will preſcribe *to have a Fine at the Marriage of his Copyhold Tenants, in which the Cuſtom doth not admit the Husband to be Tenant by Curteſy, nor the Wife to be Tenant in Dower, or have her Widow's Eſtate*, the Preſcription of ſuch a Fine is not good; but in ſuch Manor where the Cuſtom doth admit ſuch particular Eſtates, there a Preſcription for a Fine at the Marriage of his Copyholders, is upon good Conſideration. Calth. Reading. 36.

13. If a Copyholder *makes his Title to his Land by Preſcription*, he *muſt plead that the ſame* Land *is, and has been, Time out of Mind, demiſed, and demiſable; by the Copy of Court Rolls, according to the Cuſtom of the Manor* whereof it is holden. Calth. Reading, 43.

14. A Copyholder ſhall preſcribe *againſt a Stranger*, that the Lord of a Manor, for him and his Tenants at Will, have uſed the like &c. Calth. Reading, 45.

15. Copyholder for Life can't preſcribe againſt his Lord, but *Copyholder in Fee may preſcribe againſt the Lord*, for he has the Copyhold in Nature of Land of Inheritance. Sty. 233. Mich. 1650, B. R. Cage v. Dod.

(P. e. 2) Remainders limited. How. Good. And where they are Contingent.

Gilb. Treat. of Ten. 257. cites S. C.

1. A *Copyhold, where the Cuſtom was to demiſe for three Lives, is demis'd to one for Life, Remainder to ſuch a Wife as he ſhould marry, and to the firſt Son of their Bodies.* The firſt Eſtate for Life is good, but the 2 Remainders are void, by the Opinion of all the Juſtices. Mo. 677. pl. 922. Mich. 44 & 45 Eliz. Webſter v. Allen.

Gilb. Treat. of Ten. 249. cites S. C. and ſays, it is made a Doubt; but as to this Point we ought to diſtinguiſh, for it ſeems ſome are, and ſome are not; As for Example, if an Eſtate be given to a Copyholder for Life, the Remainder to the right Heirs of J. S. if ths Tenant for Life die, living J. S. there it ſeems clear that the Remainder

2. *Where there is a limited Eſtate* of Copyhold Lands *and a contingent Remainder depending thereupon, and the Particular limited Eſtate, which muſt ſupport this contingent Remainder, is deſtroy'd*, the Queſtion was, whether the contingent Eſtate is thereby likewiſe deſtroy'd? It was argued, that it was, for that theLaw is the ſame in that Point, inCopyhold Caſes, as it is in other Caſes at the Common Law, they being directed by the Rules of the Common Law, and cited it as ſo ruled 13 Jac. B. R. But it was anſwer'd, on the other Side, that Copyhold Eſtates do not depend the one on the other, as Eſtates at Common do. Sty. 250. Hill. 1650. B. R. in Caſe of Bawſy v. Lowdall.

der is deſtroy'd; for it cannot take Effect, as by the Limitation it ought; but then, if Tenant for Life in that Caſe had committed a Forfeiture, or made a Surrender, and then living Tenant for Life, J. S. had died, it ſeems to be very clear, that his right Heir might take; for his Eſtate in Remainder was not to take Effect after the Determination of the Intereſt of Tenant for Life, but after his Death, and when that happened he was able to take.

(Q. e) Rent incroached.

1. IF the Lord *incroaches Rent* of his Tenant, the Tenant can't *avoid* it in Avowry, but in Aſſiſe or Ceſſavit, or Ne Injuſte Vexes he may; But if ſuch Tenant infeoff another, his *Feoffee* ſhall never avoid it, for he ſhall take the Land in the ſame Plight as it was given to him; Arg. 5 Rep. 100. b. Trin. 40 Eliz. C. B. in Penruddock's Caſe, cites 33 E. 3. Avowry 255. 18 E. 2. Avowry 217. 4 E. Avowry 201.

2. *Encroachment of a Thing of another Nature* than what is reſerved gives no Seiſin to the Lord of ſuch Thing. Kelw. 73. Mich. 21 H. 7. Pl. C. 49. b. S. P. and Tenant cannot traverſe the Tenure, Feoffamenti,

but the Seiſin only, and muſt relieve himſelf by a Ne Injuſte Vexes, or Contra Formam in Caſe of Woodland v. Mantell.

3. By the Rules of Law, in Caſe of *Incroachment of Rent*, if the Tenant makes but *one Payment* of more than was due, he ſhall never go back from it; Per Wright K. 2. Vern. 516. pl. 465. Mich. 1705. in Caſe of Steward v. Bridger. See 4 Rep. 11. b. Bevil's Caſe contra, and Statute 32 *H.* 8. 2.

which is, that the Avowry ſhall be for Rent within 40 Years laſt paſt.

(R. e) Trees. Intereſt of the Tenant in Trees ſtanding, or cut, or Windfalls.

1. A *Cuſtom* for a Copyholder *to have Common of Eſtovers in the Woods of the Lord*, Parcel of the Manor, of which the Copyhold was held, was adjudged to be good. 4 Rep. 32. a. pl. 25. Mich. 29 & 30 Eliz. in Caſe of Foiſton v. Crachrode, cites it as adjudged Paſch. 10 Eliz. as it was ſaid in this Caſe. And cites 21 E. 3. 34. 1 Mar. Dy. 114. 5. [6.] E. 6. Dy. 70, 71. a. pl. 37. &c. Wythers v. Iſeham.

2. Copyholder by Common Law may cut off the *Under-boughs*, which cannot cauſe any Waſte, but the Amputation of the Top-boughs will cauſe the Putrefaction of the whole Tree, wherefore it is Waſte as well as the *Decapitation* thereof. Cro. E. 361. pl. 21. Mich. 36 & 37 Eliz. C. B. Dawbridge v. Cox. Gilb. Treat. of Ten. 222, 223. cites S. C.

3. *Lord* of a Manor (*where Copyholders are for Life, and where the Cuſtom is that the Tenants have uſed to lop Trees for Fuel and Repairs*) *grants a Leaſe for Years of the Manor, reſerving the Trees*; ſuch Copyholders as come in after under the Leſſee may lop the Trees as before; For the Copyholders are in by the Cuſtom, which is above the Lord's Eſtate. Brownl. 231. Swain v. Becket. Mo. 811. pl. 1098. Trin. 5 Jac. C. B, the S. C. adjudged.—— 8 Rep. 63. S. C.

2 Brownl. 230. S. P.

4. If the Tenant has *uſed to have Lopps* for Fuel and Repairs, and the *Lord cuts down all the Trees*, ſo that the Copyholder can have no Lopping, he may have his Action ſur Caſe againſt the Lord. Brownl. 231. Swain v. Becket, and ſays it was adjudged in Goſnold's Caſe.

5. A *Cuſtom* that the Lord ſhall have Maeremium, and the Tenants ſhall have *Ramillos*, gives all the Arms and Boughs to the Tenants; if Per Hobert Ch. J. ſo were the Cuſtom was for the *Lord to have the Maeremium, and the Tenants the Reſiduum*; the Reſiduum means the Boughs and Branches. Godb. 235. pl. 326. Mich 11 Jac. C. B. Bp. of Chicheſter v. Strodwick.

6. *Non-uſe* and Negligence *in not taking the Boughs* does not *extinguiſh*, or take away *the Cuſtom*, as hath been often reſolv'd in the like Caſe. Godb. 237. pl. 326. Mich. 11 Jac. C. B. Bp. of Chicheſter v. Strodwick.

Gilb. Treat. of Ten. 224. cites S. C.

7. The whole Court clear in this, that by the Cuſtom the Copyholder is to employ the Timber for his Reparation, and though with the *Top and Bark* he cannot repair, yet theſe he is to have, and may ſell them, towards the defraying his Charges in his Reparation. 3 Bulſt. 282. Trin. 14 Jac. B. R. Sandford v. Stevens and Smith.

8. Neither Copyhold of Inheritance, where the Cuſtom is to cut Timber for Repairs, nor Leſſee, can imploy *Trees blown down by the Wind*, unto any ſuch Uſe, becauſe hereby his ſpecial Property ceaſes; much leſs can Leſſee or Copyholder for Lives by any ſuch Cuſtom take Trees; Per Windham J. Keb. 691. pl. 5. Paſch. 16 Car. 2. Ailner's Caſe.

9. *Copyholders claimed, as by Cuſtom, the Timber Trees* on the Copyhold, *without Controul of the Lord*; The *Lord claimed* them as Lord of the Manor, and that the Tenants had only the decayed Wood for Fuel, and neceſſary Timber for Repairs, but that to be had only with Licence. *Commiſſion was directed* to ſeveral Perſons, to ſet out ſufficient Timber and Wood for all Manner of *Botes and Eſtovers*, according to the Cuſtom uſed within the Manor, and the ſame to remain for the Uſe of the Tenants, and the Lord, and his Heirs, to take the reſt. Fin. Rep. 199. Hill. 27 Car. 2. Ayray v. Bellingham.

10. The Tenant has the ſame Cuſtomary or Poſſeſſory Intereſt in the Trees that he has in the Land; and if the Lord has a Mind to cut Trees, his Buſineſs is to *compound with the Tenant* 3 Cro. 361. that Tenant may *lop Under-Boughs*, and *cut for Repair and Bote*; and 3 Cro. 5. is not Law, as appears by Heiden and Smith's Caſe. 13 Co. If *Birds build Neſts* in the Trees, the *Eggs are the Tenants*, which ſhews he has the Poſſeſſory Intereſt in the Trees, though his Eſtate be but for Years, and whether the Lord may cut Trees, leaving ſufficient Eſtovers, is very gently trod on in Heiden and Smith's Caſe, but no Copyholder can commit *Waſte* without a ſpecial Cuſtom, but all Copyholders have *Eſtovers of Common Right*. If a Man grant all his Eſtovers, and cuts down the Wood, or does any other Act whereby the Grantee loſes the Benefit of the Grant, Caſe will lie; Per Holt Ch. J. 12 Mod. 379. Paſch. 12 W. 3. in Caſe of Aſhmond v. Ranger.

Ibid. 94. pl. 3. Mich. 5 Ann. B. R. Anon. S. P. and ſeems to be S. C —— By a MS Caſe which I have of Mich. 5

11. A Copyholder has *only a Poſſeſſory Property* in Timber-Trees, which, if ſevered from the Freehold by Tempeſt, or otherwiſe, the Property would be in the Lord, per Holt Ch. J. And he ſaid further, and ſo was the Opinion of the Court, that it would be a hard Cuſtom for the Tenant to claim ſuch Trees, for ſuch Cuſtom would be to give away the Property of the Lord, eſpecially in this Caſe, which was occaſioned by the Act of God; He alſo queſtioned, if there could be ſuch a Cuſtom, as for a Copyholder to cut Timber, he having only a Poſſeſſory

fory Intereſt, by Reaſon of its being annexed to the Copyhold Lands. 11 Mod. 68. pl. 1. Hill. 1705. 4 Ann. B. R. Anon. Ann. B. R. Mackerel v. Harriſon

S. P. it ſeems to be S. C. and to concern Mr. Bankes's Manor of Kingſton Lacy, where a Cuſtom was pretended, that Wind-falls belong'd to the Copyholder for Life.

(R. e. 2) Trees. Lord or Tenant's Power as to cutting them down.

1. IF the *Lord grants to the Copyholder the Trees growing, and which ſhall grow* hereafter; and that it ſhall be lawful to the Tenant to cut and carry them away, he may juſtify cutting the Trees growing, and it is no Forfeiture of his Copyhold; For he has diſpenced with the Forfeiture by his Grant; but he *cannot cut the Trees that grow after*; For the Grant is * void as to them; Per Plowden and Popham, as Hedworth ſaid, who was of Counſel in it. Mo. 94. pl. 234. Paſch. 12 Eliz. Anon.

* He is only Tenant at Will and claims by Cuſtom and not capable of a Grant. Arg. See Vent. 389. in Caſe of Potter v. North.

2. A Copyholder cannot, by the Common Law, take Trees for *Houſe-bote*, *Hedge-bote*, *and Cart-bote* &c. except by ſpecial Cuſtom. Cro. E. 5. Paſch. 24 Eliz. B. R. Ld. Montague v. Sheppard.

This Caſe was denied for Law, Per Holt Ch. J. 2 Salk 638. in Caſe of Aſhmead v. Ranger. —— He may take them of Common Right as a Thing incident to the Grant, *but* the ſame may be reſtrained *by Cuſtom*, that is to ſay, that the Copyholder ſhall not take it, unleſs by *Aſſignment of* the Lord or his Bailiff &c. 13 Rep. 68. Heydon v. Smith.

3. In Treſpaſs Vi & Armis. The Defendant in Bar to the new Aſſignment pleaded, that he is a Copyholder for Life of the Manor of M. in the County of S. and that in that Manor there was a *Cuſtom, that every Copyholder for Life had uſed, at his Pleaſure, to cut down all the Elms* growing upon his cuſtomary Lands, and to convert them to his own Uſe, when, and as often as he would, and ſo juſtifies; and a Demurrer upon the Bar; And the Queſtion was, whether the Cuſtom was good and reaſonable? And the latter, [better] Opinion was, that it was a good and reaſonable Cuſtom, but now it is otherwiſe held. Brownl. 236. Paſch. 40 Eliz. Luttrel v. Wood & al'.

Bulſt. 158. S. C. cited by Williams J. as adjudged that ſuch Tenant cannot preſcribe to cut down Timber Trees, but by way of Uſage he may for Reparations; And in the principal Caſe there, which was Trin. 9 Jac. **Northumberland (Earl) v. Wheeler**, the clear Opinion of the Court was, that a Preſcription for a Copyholder for Life to cut down Timber Trees is againſt Reaſon, and void in Law.

4. A bare *Copyholder for Life* cannot *preſcribe to cut and ſell the Trees* on his Copyhold, but a Copyholder of Inheritance may, or a Copyholder for Life, where the *Cuſtom is that he may nominate his Succeſſor, paying a reaſonable Fine* to be aſſeſſed by the Lord, or elſe aſſeſſed by the Homage. Noy 2. cites Trin. 2 Jac. ſo held according to Yelminſter Cuſtom in Caſe of Powel v. Peacock.

Cro. J. 29. pl. 8. S. C. adjudged. —— Bulſt. 158. Williams J ſays it was adjudged, in the Caſe of Lutterel v Wood, that Copyholder for Life cannot preſcribe to *cut down* Timber Trees. —— But by way of Uſage he may for Reparations, per Williams J. Ibid —— If there is a *Copyholder for Life, who by Cuſtom may name his Succeſſor for Life, and ſo for that Copyholder to name his Succeſſor*, ſuch a Tenant for Life cannot by Cuſtom cut Timber; but if he had been a Copyholder of Inheritance, ſuch Cuſtom is good. Gilb. Treat. of Ten. 223.

5. The

5. The Lord ſhall not take all, but *muſt leave ſufficient for Repairs*, per Coke Ch. J. Arg. 2 Brownl. 200. in Caſe of Swain v. Becket. And ſays, Wray Ch. J. in 33 Eliz. was of the ſame Opinion.

2 Brownl. 85. to 91. S C. argued by the Counſel — Ibid. 192 to 203. S. C. argued by the Court, and Judgment accordingly, per tot. Cur.——S. C. cited Cro. C. 221. as agreed by all the Juſtices; but they all agreed that ſuch a Cuſtom for a Copyholder for Life to cut down and ſell Trees was not good, and they there cited the Caſe of Powell v. Peacock to be ſo adjudged, and to be good Law.

6. Where the *Cuſtom* was, *that a Copyholder for Life might name* to the Lord *who ſhall be his Succeſſor*, this is ſuch a Privilege, that if the Copyholder cuts down Trees, it is no Forfeiture, becauſe he has a greater Eſtate than a bare Tenant for Life. Brownl. 132. Hill. 6 Jac. Rolls v. Maſon.

Supplement to Co. Comp. Cop. 84 S. 19. cites S. C. ſays it was doubted if it was a good Cuſtom; but the better Opinion of the Court ſeemed to be, that the Cuſtom was good.

7. A Copyholder alleges the *Cuſtom* to be, *that all the Tenants within ſuch a Manor in Eſſex, had uſed to cut down Trees to repair their Copyhold and Freehold Tenements within the Manor, and* alſo *to ſell* their Trees *at their Pleaſure*; and adjudged a good Cuſtom. 4 Le. 238. pl. 382. Paſch. 6 Jac. C. B. Glaſcock's Caſe.

8. By the Common Law the Lord of the Manor may *take away Trees cut down by Copyholder* on his Copyhold Land without a ſpecial Cuſtom for it. Brownl. 42. Trin. 6 Jac. in a Nota.

9. *Cuſtom* for Copyholder *to cut Trees at his Pleaſure* is *againſt the Common Law*, per Yelverton J. Win. 1. Paſch. 19 Jac. C. B. ſays it was adjudged when Anderſon was Ch. J.

Jo 245. pl. 2 S. C. reſolv'd per tot. Cur. that ſuch Preſcription was not good for a Copyholder for Life, and that it was ſo adjudged before in C. B. but ſuch Preſcription by Copyholder of Inheritance is good.——*Cuſtom that every Copyhold Tenant may cut down Trees at their Will and Pleaſure is uureaſonable* and void; for then a Tenant at Will might do it; ſo it is for a Copyholder for Life to do it; and one of the Reaſons given is, that the ſucceeding Copyholder would not have wherewithal to maintain the Houſe and the Plough, which plainly intimates that a Copyholder *may cut Timber to make Reparations*, and the rather, becauſe permiſſive Waſte is a *Forfeiture* in him. Gilb. Treat. of Ten. 223.

10. It is a good *Cuſtom, that* a *Copyholder in Fee may cut* down Trees *and ſell* them *at his Pleaſure*, for here it is only to the Prejudice of him and his Heirs, and when he hath quaſi an Inheritance in the Copyhold, he hath ſo alſo in the Trees growing thereupon, but a Copyholder for Life hath but a particular Eſtate in the Land or in the Trees. It is againſt the Nature of a Copyhold Eſtate, that he ſhould do Acts in Deſtruction of his Eſtate, therefore Cuſtoms that maintain them ſhall be all void, but not e converſo, for all ſuch are unreaſonable and void, and the uſing of them will be a Forfeiture. Cro. C. 220. pl. 7. Trin. 7 Car. B. R. Rockey v. Huggens.

11. Northey ſaid, that Lord might cut Trees on Copyhold by *general Cuſtom* of Copyhold, or elſe, if it were Copyhold in Fee, the Wood could never be cut, which would be inconvenient; but Holt ſaid, ſure he cannot, for the Copyholder has the ſame Intereſt in the Trees, that he has in the Land, and he always have taken it ſo. 12 Mod. 317. Mich. 11 W. 3. Earl of Kent v. Waters.

12. If there be a Cuſtom for a Copyholder *to take Timber for Reparations, Fuel* &c. ſuch a *Cuſtom is good, though the Copyholder have but a particular Eſtate*, but he cannot do what he will with the Timber. Gilb. Treat. of Ten. 223.

* Contra per Coke Ch. J. if the Lord leave

13. In Caſe of *Copyholders of Inheritance*, it was adjudged lately in Dom' Proc' that neither the Copyholder without the Lord, nor * the Lord without the Copyholder, without a Cuſtom, could *cut down* the Trees

Trees on the Copyhold Eſtate, and ſo reverſed a Judgment in B. R. Ex Relatione Servientis Chapple in 1727.

ſufficient for Reparations. Godb. 174. pl. 239. Paſch. 8 Jac. C. B. in Caſe of Heydon v. Smith.

(R. e. 3) Trees. Remedy for Tenants, as to Trees cut by the Lord. And Pleadings.

1. TReſpaſs was brought by Tenant at Will, according to the Cuſtom of the Manor *of Trees cut*; The Defendant pleaded, Not Guilty, and the Jury found for the Plaintiff, and he *recovered his Damages* by Judgment, *tho' it be another's Frank-Tenement*; Quod Nota. Br. Tenant per Copie, pl. 2. cites 2 H. 4. 12.

Br. Treſpaſs, pl. 73. cites S. C.

2. Copyholder brought *Treſpaſs againſt the Lord* for cutting down and carrying away his Trees &c. It was found, that the Place where &c. was cuſtomary Lands held of Defendant, and that the Trees were *Cherry Trees*, *De Magnitudine Sufficiente eſſendi Maeremium*, and that the Place where they growed was neither Orchard nor Garden; Per Cur. the Copyholder cannot cut down ſuch Trees which are not Waſte, but becauſe it appears not by the Verdict that the Trees for which the Action was brought, was *Timber in facto*, but only De Magnitudine eſſendi &c. the Plaintiff had Judgment. Le. 272. pl. 365. Mich. 25 & 26 Eliz. C. B. Anon.

3. Action on the *Caſe* lies for Copyholder againſt the Lord for *cutting Pollards* in his Copyhold, ad Damnum, declaring where by the Cuſtom, the Copyholder us'd to have the Shrowds and Tops of all Trees ſtowing and powling [Pollingers] within the Copyholds &c. It was agreed upon Deliberation, and the Plaintiff had Judgment and Writ of Inquiry of Damages. Mo. 546. pl. 727. Trin. 40 Eliz. Stebbing v. Goſnel.

Cro. E. 629. pl. 24. S. C adjudg'd per Popham and Fenner, but Clench doubted, and Gawdy was abſent. —— S. C. cited per Cur. 13 Rep. 69 —— S. C. cited by Coke Ch. J. as adjudg'd upon Demurrer. Roll Rep. 196. in pl. 37. Paſch. 13 Jac. B. R. —— Brownl. 197. S. P. in Caſe of Crogat v. Morris. —— 2 Brownl. 149. S. P. cited by Coke Ch. J. as adjudg'd in Whiteband's Caſe —— Noy 14. S. P. in Caſe of Croſs v. Abbot —— Gilb. Treat. of Ten. 225. cites S. C. and ſays this muſt be underſtood where there is not ſufficient beſides.

4. A Copyholder in Fee preſcrib'd to have the *Topping and Loppings* of all Trees for Fire-bote and Hedge-bote, and the Lord having Sold the Trees, he brought Treſpaſs againſt the Vendee, and well, for hereby the Lord deſtroys the very Thing in which the Tenant preſcribes, and *ſuch a Right may be good for a Tenant for Life.* Noy 14. Mich. 3 Jac. B. R. Croſs v. Abbot.

Brownl. 231. S. P. in Caſe of Swaine v. Becket.

5. *If the Lord*, where the Tenant hath ſuch Botes, *cuts down all the Woods and Under-Woods* which are ſtanding and growing upon the Lands, *to prevent the Copyholder of his Botes*, he may have an Action of *Treſpaſs againſt the Lord.* It was reſolved in Heydon and Smith's Caſe. Paſch. 8 Jac. in C. B. Supplement to Co. Comp. Cop. 79. S. 13.

6. A Copyholder ſhall have a general Action of *Treſpaſs againſt the Lord*, *Quare Clauſam fregit*, & Arborem ſuam &c. ſuccidit. 13. Rep. 68. Paſch. 8 Jac. C. B. Heydon v. Smith.

But this is for his Entry, and for the cutting of the Trees; *but* he ſhall *not recover the Value* of the Trees, becauſe he is not chargeable over, but for the ſpecial Loſs which he hath, that is, for the Loſs of the Pawnage, and of the Shadow of the Trees &c. 13 Rep. 70. S. C.

7. If the Lord cut down ſo many Trees *as not to leave ſufficient Eſtovers*, &c. the Copyholders ſhall have Treſpaſs, *and the Value* of the Trees in Damages, but if he *leaves ſufficient* Eſtovers, then he ſhall have *Treſpaſs* too, but ſhall only recover *ſpecial Damages*, viz. for the Loſs of his Umbrage, breaking his Cloſe, treading his Graſs &c. Per Holt Ch. J. 12 Mod. 379. Paſch. 12 W. 3. In Caſe of Aſhmond v. Ranger.

The Leſſee was Leſſee of a Widow who had an Eſtate by the Cuſtom. 12 Mod. 378. Paſch. 12 W. 3. Aſhmond v. Ranger.

8. Treſpaſs by *Leſſee of a Copyholder for Life* againſt the Servant of the Lord of the Manor for cutting down Trees, held maintainable in B. R. and affirmed in Cam. Scacc. but reverſed in Dom' Proc' for the Tenant could not cut the Trees, and if he could not they muſt rot on the Land; For then no Body could. 2 Salk. 638. pl. 6. Aſhmead v. Ranger.

S. C ——— 11 Mod. 18. S. C thus viz. A. *Copyholder for Life* of a Houſe and Land, that *by the Cuſtom* of the Manor may *fell Timber for Repairs* of the Copyhold Tenement, brings an Action of Treſpaſs *againſt the Servant of the Lord, who* entred by his Lord's Command, and *cut Timber* upon the Lands of the Copyholder, by which the Copyholder had not ſufficient to repair the Copyhold Tenement; Adjudged in B. R. by all the Court, that the Copyholder might have this Action; which Judgement was afterwards affirmed in the Exchequer Chamber by all the Judges in England; and now reverſed in the Houſe of Lords, Eleven againſt Ten.

(R. e. 4) Forfeiture. What. And in what Caſes relieved.

1. IF a *Copyholder for Life cuts* down *Timber Trees*, it is a Forfeiture of his Copyhold; and ſo it was adjudged in **Belfield and Adam's Caſe**; But if *Copyyholder makes a Leaſe for Years*, and the *Leſſee cuts down Timber Trees*, or commits other Waſte upon the Copyhold Lands, the Lord cannot enter upon the Land for a Forfeiture, but in ſuch Caſe the *Lord is put to this Action* upon the Caſe *againſt the Wrong-doer*. Supplement to Co. Comp. Cop. 76 S. 10. cites Winch. 62.

G. Treat. of Ten. 224. cites S. C.

2. If *Under-Leſſee for Years of Copyholder* cuts down Timber, it ſhall not be a Forfeiture of the Copyholder's Eſtate; Per Cur. Sty. 233, 234. Mich. 1650. on a Trial in B. R. Cage v. Dod.

Gilb. Treat. of Ten. 281, 282. cites S. C. that the Grant determines the Licence; for the Licence is only a Diſpenſation of the Forfeiture, and gives no Property; but the Property being transferred to another before the Felling, there muſt be a new Licence to fell, becauſe he is not Party, nor Privy to it; but if the Leſſee fell Timber after ſuch an Alienation of the Manor, it is no Forfeiture; Sed Quære.

3. The Lord grants the Copyholder a *Licence to fell*, and afterwards, *before the Trees are felled, the Lord grants away the Manor*, tho' the Licence be now determined and repealed, yet the Cutting is no Forfeiture; Per Twiſden J. Keb. 25. pl. 74. Paſch. 13 Car 2. B. R. Munſas v. Baker.

Gilb. Treat. of Ten. 281. cites S. C. and that the Leſſor cannot take Advantage of the Forfeiture; For thereby the Leſſee of the Manor would loſe the Services of his Tenant; for he is the Lord of whom the Copyholder holds, and therefore he muſt take advantages of Forfeitures, if any Body can, which in this Caſe he cannot do, becauſe of his Licence; but then, when his

4. Though a *Licence by Leſſee for Years of a Manor* to a Copyholder *to fell Timber* be good againſt himſelf, yet it is void againſt the Leſſor, becauſe the Licence is derived out of the Intereſt, and ſo can be of no greater Extant than that, and the Aſſignee of Leſſee may take Advantage of it; Per Twiſden. Keb. 25, 26. pl. 74. Paſch. 13 Car. 2 B. R. Munſas v. Baker.

his Intereſt is determined, ſince there is a Prejudice done to the Inheritance of the Manor, it ſeems the Leſſor may take Advantage of the Forfeiture, for the *Licence determines by the Expiration of the Years.*

5. A *Forfeiture* of a Copyhold by Felling of Timber *relieved* in Equity after a Trial directed on an Iſſue at Law, whether the ſuppoſed Waſte was wilful or not, and found that it was not. Chan. Caſes 95. Paſch. 19 Car. 2. Porter v. Bp. of Worceſter & al'.

(S. e) Truſts. What ſhall be ſaid to be a Truſt of Copyholds. And Caſes concerning them.

1. A *Purchaſed* a Copyhold *in the Names of J. S. and J. N. in Truſt for A.* A. being a Villain, J. S. ſurrendered his Moiety to the Uſe of his own Son. J. N. died ſeiſed. The Son of J. S. and the Heir of J. N. ſold the Copyhold to C. for 100l. C. had no Notice of the Truſt, and the Copyhold was worth 150l. It was decreed by Egerton Lord K. that A. ſhould recover the 50 l. only of J. S. (not the Son of J. S. who was no Party to the Suit) and the Heir of J. N. and that C. ſhould hold in Peace; But if *Notice* had been proved in C. A. ſhould have had the Land, and no Recompence for the *Over-Value* was given, becauſe there was no fraud. Mo. 552. pl. 745. Paſch. 41 Eliz. in Chanc. Robes v. Bent and Cock.

2. A. *took a Copyhold* Eſtate in Reverſion for three Lives, and the Copy was *to D. E. and J. S. ſucceſſively*, and the Entry was D. *dat Domino pro Fine* 4*l.* By the Cuſtom of the Manor the firſt taker may bar the Remainder. D. and E. died. J. S. was admitted; The Copyhold was decreed to the Plaintiff, who was Heir and Executor to D. For per Finch Ch. tho' A. paid the Fine, yet when by conſent D. was *made Purchaſor by the Copy*, it ſhall be taken all one as if D. had paid it, and ſo all the Eſtates in Remainder ſhall be intended as in Truſt for D. and ſhe may diſpoſe of them. Ch. Caſes 310. Hill 30 & 31 Car. 2. Clark v. Danvers.

3. A Copyholder *ſurrendered to J. S and his Heirs*, and *declared by Parol* that his Wife ſhould have it if ſhe ſurvived him, and if both died it ſhould be ſold, and the Money divided equally among the Plaintiffs. He afterwards made a Will, in which he took no Notice of this Copyhold, and he and his Wife died ſoon after. The Bill was to have Execution of the *Truſt*, and the Defendant was Heir at Law, and it was decreed, that where a Surrender is made to a Stranger and his Heirs, he is but a Truſtee for the Heir at Law. N. Ch. R. 190. Mich. 1691. Chew v. Chew.

4. A Copyhold is granted to three for their lives *ſucceſſive*, but *no Cuſtom within the Manor that the firſt Taker may diſpoſe* &c. of the Eſtate. The two firſt Lives died. The Court would not decree the remaining Life to be a *Truſt for the firſt Taker*, and to go to his Executor or Adminiſtrator, as had been done in other Caſes, where there had been ſuch a Cuſtom, and the rather in the principal Caſe, becauſe the former Copy was to J. S. the Father of the firſt Taker and to the firſt Taker, and the Surrender on which the preſent Copy was taken, was by them both, *Sub Conditione that the Lord make a new Grant for three Lives prout*, and it is *dant Domino de Fine* &c. ſo that the Eſtate moved from the Father rather than the now firſt Taker; But it was agreed per

per. Cur. that if it had been a *Truſt* it ſhould *go to the Adminiſtrator*, though it was an Eſtate for Lives and whether Freehold or Copyhold. 2. Vern. 264. pl. 249. Paſch. 1992. Rundle v. Rundle.

5. Held by the Lords Commiſſioners, that if a Copyholder *purchaſes a Copyhold for three Lives, and puts in his own Life and two others, Habend' ſucceſſive ſecundum Conſuetudinem Manerii*, if the *firſt Taker paid the Money*, the other two are but in the Nature of Truſtees for him, and he may diſpoſe of the Eſtate in Equity, altho' it be in a Manor where there is *no Cuſtom for the firſt Taker to diſpoſe*, unleſs it ſhall appear that the other two Lives were put upon ſome Conſideration, or in Purſuance of ſome Agreement &c. 2 Freem. Rep. 123. Paſch. 1692. Anon.

6. A. was *Tenant in Tail of the Truſt* of a Copyhold with *Remainder over*, and Truſtees refuſing to ſurrender the legal Eſtate to him, he brought his Bill to enforce them, and pending the Suit, he offered at the Lord's Court to ſurrender, but was refuſed, becauſe he had not the legal Eſtate. A. *by Will gave the Eſtate to his Wife.* Cowper K. decreed the Eſtate to go according to the Will, conceiving what A. had done, and endeavoured to do, was ſufficient to *bar the Entail of a Truſt*, and that where there is no particular Method in the Lord's Court for barring Entails, a general or common ſurrender is ſufficient, even where the Entail is of a legal Eſtate. 2 Vern. 583. pl. 525. Hill. 1706. Otway v. Hudſon Mills & al'.

(T. e) Uſes limited. How conſtrued.

Cro. E. 386. S. C. but Adjornatur.—— Goldsb. 129 pl. 23. S. C. but not S. P.

1. A. *Copyholder for Years* or Life ſurrendered *to the Uſe of B. and his Heirs* for ever. The Biſhop of W. who was the Lord of the Manor, conſented to the Surrender. The Surrender is good, and the Uſe *void.* Mo. 352. pl. 474. Hill. 26 Eliz. Portman v. Willis.

3 Salk. 206. pl. 13. S. C. & S. P. held accordingly. —— 12 Mod. 296. S. C. with the Arguments of the Court and Judgment accordingly.——Lord Raym. Rep 622. S C. with the Arguments of the Judges at large, and Judgment given that it was a *Tenancy in Common*, contra to the Opinion of Holt Ch. J.——Comyns's Rep. 88. S. C. adjudged accordingly.

2. A Copyhold Eſtate was ſurrender'd *to the Uſe of A. B. and C. and the Heirs, equally to be divided between them and the Heirs reſpectively.* Turton and Gould Juſtices held this an Eſtate in Common, but Holt Ch. J. held it a Jointenancy; but Judgement was given according to the Opinion of Turton and Gould. 1. Salk. 391. pl. 3. Hill. 12 W. 3. B. R. Fiſher v. Wigg.

2 Lord Raym 1145. S. C. & S. P. by Gould. J.

3. A Limitation of Uſes of a Copyhold Surrender muſt be *conſtrued* by the ſame Rule, and in the ſame Manner as if it were a Limitation in a Deed, or any other Conveyance at Common Law, and the *Intent of a Party* is not ſufficient as in a Will, for 32 H. 8. 1. leaves the Teſtator at Liberty to expreſs his Intent as he pleaſes, but the Common Law ties up Conveyances to Set-Forms, and Set-Words; Per tot. Cur. 2 Salk. 621. pl. 3. Paſch. 4 Ann. B. R. Idle v. Coke.

(U. e) Pleadings.

1. IN Treſpaſs, the beſt Opinion was, that it does not lie in Cuſtom for Tenant at will to him and his Heirs, according to the Cuſtom of the Manor of a Biſhop, *to ſay that the Cuſtom is, that if the Biſhop dies*, that *he ſhall be Tenant to the King during his Life, and after to his Succeſſor*; For it does not lie properly in Cuſtom; and alſo, per Fulthorp J. the Pleading is not good; For he who pleads Cuſtom *ſhall ſay, that the Vill is an ancient Vill*, or Borough, *and then to proceed*; For a new Vill cannot have Cuſtom. Br. Cuſtoms, pl. 25. cites 21 H. 6. 36, 37.

2. The Tenant for Life by Copy *ſhall ſay* in Pleading, *that he is Seiſed in his Demeſne as of Frank-tenement according to the Cuſtom of the Manor* &c. Br. Pleadings, pl. 114. cites 21 E. 4. 80.

3. *Every Admittance*, as well upon a Deſcent as Surrender, *may be pleaded as a Grant* to avoid the Inconvenience which would follow, if the Copyholder ſhould be forced in Pleading to ſhew the firſt Grant, for that was either before the Time of Memory, and ſo not Pleadable, or within the Time of Memory, and then the Cuſtom fails. 4 Rep. 22. b. Mich. 23 & 24 Eliz. Brown's Caſe.

4. *So he may alledge the Admittance of his Anceſtor as a Grant, and ſhew the Deſcent to him, and* that he *entred without ſhewing any admittance of himſelf*. 4 Rep. 22. b.

5. *But* he *cannot plead that his Father was Seiſed in Fee at the Will of the Lord by Copy* of Court Roll, of ſuch a Manor, *according to the Cuſtom* of the Manor, *and that he died ſeiſed, and it deſcended to him*; for in Truth his Intereſt, in Judgment of Law, is but a particular Intereſt at Will. 4 Rep. 22. b.

6. *Lands are granted by Copy, which were never ſo granted before*, and the *Iſſue is, whether the Lord granted by Copy of Court-Roll Secundum Conſuetudinem Manerii?* It was held per tot. Cur. that the Jury muſt find that Dominus non conceſſit, for tho' De facto Dominus conceſſit per Copiam &c. yet it was not ſecundum Conſuetudinem Manerii; For the ſaid Land was not cuſtomary nor demiſable; For the Cuſtom had not taken hold of it. Le. 55. pl. 70. Paſch. 29 Eliz. C. B. Kemp. v. Carter. Supplement to Co. Comp. Cop. 82. S. 16. S. C.

7. If one pleads a *Seiſin of a Copyholder in Fee, and claims under him, he muſt ſhew of whoſe Grant*, as he ought to do of any other particular Eſtate; but if he ſhew the *Admittance of the laſt Heir*, which is in Nature of a Grant, and may be pleaded as ſuch, it is ſufficient. Cro. J. 103. pl. 37. Mich. 3 Jac. B. R. Piſtor v. Hemling.

8. The Plaintiff ſhewed in his Replication, *Quod ſeiſitus fuit in Dominico ut de feodo ſecundum Conſuetudinem Manerii* de Rameſden, of the Houſe, and *de una Virgata Terræ Nativæ, and does not ſhew, that the ſame was Cuſtomary Land*. The Court agreed they could not intend this to be Copyhold Land, but that he *ought to have alleged expreſsly, that this was held by Copy*, or to have ſhewed ſome ſuch Matter. 3 Bulſt. 230. Mich. 14 Jac. Elkin v. Waſtell. Roll Rep. 411. pl. 54. Waſſell v. Yelton, S. C. but S. P. does not clearly appear.

9. In *Treſpaſs*, the Defendant *juſtified* becauſe it was the Freehold of J. S. and that he entered by his Command. The Plaintiff replied, that the Land was Cuſtomary Land, whereof J. S. is ſeiſed in Fee &c. and demiſable at Will in Fee, and *that J. N. was ſeiſed in Fee by Copy at the Will of the Lord according to the Cuſtom* &c. and died ſeiſed; and that it deſcended to two Daughter, as Heirs of J. N. and that at ſuch

a Court Dominus conceſſit eis extra Manus ſuas &c. Habend' &c. to them and their Heirs, whereby they were ſeiſed in Fee, and demiſed to the Plaintiff for Years. The Court held, that the Plaintiff had not made a good Title, becauſe *none can entitle himſelf to a Copyhold without ſhewing a Grant thereof*, and here he only ſhewing that ſuch a one was ſeiſed in Fee without ſhewing the Grant thereof, it was not good. Cro. C. 190. pl. 19. Paſch. 6 Car. B. R. Sheppard's Caſe.

10. In *Treſpaſs* for taking and impounding his Cattle; the Defendant *pleaded, that at the Time of the ſuppoſed Treſpaſs &c. he was ſeiſed of ſeveral Lands, Parcel of the Manor of M. whereof the ſaid Cloſe call'd L. is and was parcel* &c. *Ut de Statu Cuſtomario Hæreditatio, deſcendible from Anceſtor to Heir &c. according to the Cuſtom of the ſaid Manor*, and ſo *juſtifies Damage feaſant*. Upon a Demurrer it was inſiſted for the Defendant, that it did not appear by the Plea that L. was Parcel of the Land of which the Defendant was ſeiſed, but Parcel of the Manor; For the Word *(whereof)* being a *Relative, refers ad Proximum Antecedens*, which is the Manor. And it is ſaid, that he was ſeiſed De ſtatu Hæreditario deſcendible &c. but does not ſhew of whoſe Grant; For tho' it it may not appear who was the firſt Grantee, it being ſo long ſince the Copyhold was granted, yet the Admittance of an Heir upon a Surrender or Deſcent amounts to a Grant, and ought to be ſo Pleaded. The Court were Opinion, that *where Seiſin in Fee is pleaded of a Copyhold Eſtate by Way of juſtifying an Offence, with which* the Defendant is charged, *he muſt ſet out the Commencement of his Eſtate*, and therefore the Plea had Judgement. 4 Mod. 346. Mich. 6 W. & M. in B. R. Robinſon v. Smith.

Ld Raym. Rep 43. Brittel v. Bade, S. C. held by 3 Juſtices, but Powell J. e contra.

11. In Ejectment the Defendant Pleaded, that the Lands were held of the Manor of D. which is Ancient Demeſne. The Plaintiff replied, and confeſs'd, *that the Lands were held of J. S. Ut de Manerio, de D.* &c. *which is Ancient Demeſne, but that the Lands are Copyhold Lands, Parcel of the ſaid Manor.* The Defendant rejoined ex quo &c. The Plaintiff acknowledged the Lands to be Ancient Demeſne; 'tis not material whether they are Copyhold or Frank-Fee. Adjudged, that the Replication was repugnant, becauſe *Land held Ut de Manerio muſt be Frank-Fee; for Copyhold Lands are Parcel of the Manor itſelf, and cannot be held Ut de Manerio*, therefore to ſay that they are held Ut de Manerio, and yet they are Copyhold is repugnant, but the Rejoinder is ill; for if they are Copyhold Lands, then an Ejectment lies, becauſe a Writ of Right will not, by reaſon of the baſeneſs of the Nature of Copyholds. 1 Salk. 185. pl. 4. 7 W. 3. C. B. Brittle v. Dade.

1 Salk. 364. pl. 5. Hill. 4 Ann. B. R. the S. C. in Error of the Judgment in C. B. the Court held, that now after Verdict this Eſtate of the Plaintiff muſt be taken to be a Copyhold Eſtate, and not a Freehold Eſtate, becauſe it is both laid and found, that the Tenements were Parcel of the Manor, and that by Cuſtom the Plaintiff ut tenens Cuſtomar' has Common, all which is utterly impoſſible, unleſs the Tenement was Copyhold, and therefore muſt be ſuppoſed, though the Words (ad voluntatem Domini) were omitted; and the Judgment was reverſed after great Deliberation.

12. Caſe &c. for *diſturbing a Copyholder in the enjoying his Common* appertaining to his Meſſuage, in which the *Plaintiff ſet forth, that he was ſeiſed of an Houſe, and* 10 *Acres of Land in N. Parcel of the Manor of W. by Copy of Court-Roll in Fee, according to the Cuſtom of the ſaid Manor*, (but did *not ſay Secundum Conſuetudinem Manerii ad voluntatem Domini*) *and that the Plaintiff ut tenens Cuſtumarius had Right of Common in Warmlees, but was diſturbed.* Upon Not-Guilty pleaded, the Plaintiff had a Verdict, but the Judgment was arreſted in C. B. becauſe thoſe Words were omitted, tho' the Verdict had found the Cuſtom of the Manor, and that the Lands were Parcel thereof. Nelſ. a. 525, 526. pl. 9. cites 1 Lutw. 126. Mich. 10 W. 3. Crowther v. Oldfeild.

13. In

13. In *Pleading a Title to a Copyhold Eſtate, it is ſufficient to ſhew a Grant from the Lord, but in Caſe of a Cuſtomary Freehold*, 'tis not enough to ſay that the Lord granted it, or that A. ſurrendred to the Lord, and he granted; but *it muſt be ſhewn, that the Surrenderor was ſeis'd in Fee, and ſurrendred to the Lord, and he granted.* 1 Salk. 365. Hill. 4 Ann. B. R. Crouther v. Oldfeild.

2 Ld. Raym. Rep. 1231. S. P. in S. C. by Holt Ch. J. — 3 Salk. 13, 14. S. C. but S. P. does not appear. —— Lutw. 125, 126. S. C. but S. P. does not appear. —— 6 Mod. 19. S. C. but S. P. does not clearly appear.

14. In *Caſe for incloſing his Common*; the Plaintiff *declar'd, that he was ſeiſed in Fee by Copy of Court Roll, according to the Cuſtom of the Manor*, but *without ſaying ad Voluntatem Domini*; tho' it be not good Pleading, was yet held *good after a Verdict*; For unleſs the Lands, were Copyhold, it is impoſſible the finding could be true; Per Holt Ch. J. 2 Ld. Raym. Rep. 1231. Hill. 4 Ann. Crowther v. Oldfield.

3 Salk 13. Hill. 2 Ann. B. R. S. C ſays, this Declaration was held ill after a Verdict which had found it to be Parcel of the Manor, as the Plaintiff had ſet forth in his Declaration, becauſe the Words Ad Voluntatem Domini being left out, it does not appear to be Copyhold; So taking it to be Freehold, and not Copyhold, then the Preſcription ſhould be by a Que Eſtate at Common Law in his own Name, and not in the Name of the Lord. —— 1 Salk. 364. pl. 5 Hill. 4 Ann. B. R. the S. C. held well after a Verdict, becauſe the Lands were alleged to be Parcel of the Manor, and ſo reverſed a Judgment in C. B. —— 6 Mod. 19. S. C. the whole Court was clear to affirm the Judgment, but at the Importunity of Counſel, they gave Leave to ſpeak to it again, et adjornatur.

15. In *Treſpaſs*, for breaking and entring his Cloſe, the Defendant *pleaded, that the Earl of Suſſex was ſeiſed in Fee of the Manor of G. of which one Meſſage and* 40 *Acres of Paſture Lands were parcel and dimiſſa and dimiſſibilia in Fee, by Copy of Court-Roll ad voluntatem Domini, according to the Cuſtom of the ſaid Manor, and deſcendible, and which do deſcend from Anceſtor to Heir, in a Courſe of Succeſſion, call'd Tenant Right, &c.* then he *ſets forth a Grant of the Premiſſes to him and his Heirs by Copy of Court-Roll, and a Cuſtom for every Copyholder of the Manor to have Common* in the ſaid Paſture-Land, *and ſo juſtifies the Entring and Chaſing the Plantiffs Cattle Damage-feaſant*; and upon a ſpecial Demurrer, the Plaintiff ſhewed the Cauſe, that *this Plea was repugnant* and contradictory in itſelf, becauſe the Defendant had pleaded, that the Premiſſes were Time out of Mind, *dimiſſa & dimiſſibilia*, by Copy of Court-Roll, *and yet*, that they were *deſcendable from Anceſtor to Heir*, which is repugnant and abſurd, and for this Reaſon the Plaintiff had Judgment. Nelſ. a. 526. pl. 11. cites 2 Lutw. 1324. [Trin. 2 Jac.] Hutchinſon v. Jackſon.

(W. e) * Wills of Copyholds. Good. And what Words in Will extend to Copyholds, where Teſtator held Freehold and Copyhold.

* See (I. a) (M. a)

1. A. Seiſed of a Copyhold of the Nature of Borough-Engliſh ſurrendered it to the Uſe of his Will, and by his Will deviſed the Land to his eldeſt Son, *upon Condition to pay* 10 *l.* to his youngeſt Son, and afterwards the youngeſt Son *entred for Nonpayment*, and adjudged lawful; cited per Clench. J. Goldsb. 154. Hill. 43 Eliz. as Wilcock's Caſe.

2. A. ſeiſed of a Copyhold ſurrendered it to the of Uſe his Will, and *deviſed it to his eldeſt Son, paying* his Debts, and 100 l. to his Siſters when of Age, but if he failed to pay it, then ſhe was to *have ſo much* of the Eſtate *as would amount to the Value.* She came of Age, but the Son refuſed to pay her, whereupon the Homage allotted to her as much of the Land as they adjudged the Value of 100 l. but the Son, being admitted, *refuſed to ſurrender* the ſame. Decreed to pay the Allottment or ſurrender according to the Uſe declared in the Will. N. Ch. R. 24. 8 Car. 1. Marſton v. Marſton.

Chan. Caſes 39. Davie v. Beardſham, S. C. the Court held it clear that the Copyholds ſo agreed for did paſs by the Will; For that

3. *Purchaſor* of a Copyhold after a Surrender made to him, *before Admittance, died, and by Will deviſed* to one who was then his Heir at Law, but his Wife, who was then with Child, was after delivered of a Daughter; the Deviſee thinking the Deviſe void ſuffered the Daughter to be admitted, and *rented the Copyhold of her for 20 Years, and paid the Rent*, and then brought his Bill as Deviſee; Per Cur. had he come in Time he might have had a Decree, but *after 20 Years, and Payment of Rent* ſo long, it is too late. N. Ch. Rep. 76. Mich. 13 Car. 2. Daire v. Beverſham.

the Purchaſor had an Equity to recover the Land, and the Vendor ſtood truſted for the Purchaſor, and as he ſhould appoint till a Conveyance executed, but that the Plaintiff came too late.——; Chan. Rep. 4. S. C.——S. C. cited 9 Mod. 75.

The Copyhold will paſs by the Will (if a Surrender was made) though the Will takes no Notice of its having been ſurrendered.

4. A. had Freehold and Copyhold Land, and makes his Will in theſe Words, *I give all my Eſtate of what kind ſoever, not before mentioned by me, to my Wife, whom I make my Executrix*,; And it was held the Copyhold Land did paſs, not by force of the Words alone, but becauſe it appeared that he *had made a Surrender* of the Copyhold Eſtate before to the Uſe of his Will. 12 Mod 594. cites Mich. 32 Car. 2. Rot. 473. in Caſe of Shaw v. Bull.

See Cary's Rep. Hill. 1 Jac. Manwood's Caſe.

5. W. B. Rector of D. in E. *by Will in Writing atteſted by three Witneſſes, deviſed to his Wife a Copyhold Eſtate* in Ealing; afterwards the *Teſtator, on the Day of his Death, directed* his Nephew *to obliterate ſome Deviſes, but nothing as to the Copyhold* deviſed to his Wife, *and then cauſed a Memorandum to be wrote that he had examined, peruſed and appeared of the Will as ſo obliterated* and altered by his Nephew in his Preſence, *but did not republiſh* it in the Preſence of three Witneſſes, *but directed* his Nephew *to carry it to Mr. Eldred, to have it wrote out fair, but before it was brought back, became delirious.* Held to be a good Will, and the Truſtees decreed to ſurrender accordingly. 2 Vern. 498. pl. 449. 1705. Paſch. 1705. Burkitt v. Burkitt.

2 Vern 597. pl. 536. Mich. 1707. Attorney General v. Barnes S. C. but S. P. as to the Copyhold does not appear.

6. A. ſurrenders Copyhold Land to the Uſe of his Will, and then makes his Will in Writing, and deviſes his Freehold and Copyhold to *Charitable Uſes.* The Will was all Written with his own Hand, but had *no Witneſſes* to it. A. made a *Codicil*, reciting the Will, and this 4 *Witneſſes* to it. It was urged, and not denied, that doubtleſs the Copyhold was well deviſed, for that paſſed by the Surrender, and not by the Will; But Lord Cowper decreed the Will was not good to paſs the Freehold, and not being good as a Will, it could not operate as an Appointment. Ch. Prec. 270. Mich. 1708. Attorney General for Sidney College v. Bains.

—— A Will of a Copyhold Tenant not atteſted even by one Witneſs is ſufficient to declare the Uſes of a ſurrender made by him, and it falls within the Reaſon of Caſes cited, that the Party is in by the ſurrender, and not by the Will and the Reaſon equally holds to give a good Title under the ſurrender, tho' the Will is not atteſted by any Witneſſes at all, but ſuch Will muſt be in Writing, and then its being ſign'd by the Party is ſufficient; And it is the ſame in Caſe of a Truſt of a Copyhold, where the Teſtator could

could not make a Surrender of it, tho' it was objected that this differs from the former Caſe, where a ſurrender is made of a Copyhold Eſtate to the Uſe of a Will, by reaſon that there the Party is in by the ſurrender, whereas here the Truſt paſſes merely by the Will, and that therefore the Will ought to have had the three Witneſſes; But Lord Chancellor's Opinion was, that this Point muſt be ſo determined in Caſe of Truſt, and if ſuch Atteſtation is not neceſſary where the Copyhold is not in Truſt, it muſt conſequently be the ſame where it is in Truſt; And in this Caſe Equity follows the Law, and that this Court is never more ſtrict in requiring Ceremonies to paſs the Truſt of an Eſtate, than it is to paſs the legal Intereſt in it. Barnard. Chan. Rep. 12, 13. Paſch. 1740. Tuffnell v. Page.

7. A. ſeiſed of Freehold and Copyhold deviſed *all his Real Eſtate for Payment of his Debts*, but had not ſurrendered the ſame to the Uſe of his laſt Will. Lord C. Parker was of Opinion, that if the Freehold Eſtate was not ſufficient to pay the Debts, the Copyhold ſhould come in Aid, and directed the Maſter to ſee if the Freehold was ſufficient without the Copyhold. Wms's Rep. 443. Trin. 1718. Drake v. Robinſon.

8. *But* in Caſe of ſuch Deviſe by the Father, where he left *no Debts, and the Copyhold being Borough-Engliſh, deſcended to the youngeſt Son*, and there being 3 Sons, Lord C. Parker ſaid, that tho' with regard to Creditors the Copyhold would be liable, yet as between the Sons it would be a doubtful Caſe. Wms's. Rep. 444. Trin. 1718. Drake v. Robinſon.

9. A *Deviſe of all his Eſtate whatſoever* comprehends all that a Man has, Real or Perſonal, and when there is a Surrender to the Uſes of his Will, a Copyhold Eſtate will fall under the ſame Conſtruction. Comyns's Rep. 337. Paſch. 6 Geo. 1. C. B. Scott v. Alberry.

10. By a Deviſe of * *all his Lands*, Copyholds, ſurrendered to the Uſe of a Will, will paſs; And ſo it will by the Words ‡ *all his Real and Perſonal Eſtate*; Admitted. 9 Mod. 72 Mich. 10. Geo. in Caſe of Acherley v. Vernon.

* Arg. 9 Mod. 75 cites Davis Beardſham, S. P. 2 Chan. Rep. 39.

—— ‡ A contracted for Purchaſe of Lands, Freehold and Copyhold, It was adjudged, that by a Deviſe of Real Eſtate, thoſe Copyholds would paſs in Equity; Arg. 9 Mod. 75. cites the Caſe of Woodyer v. Greenhill.

11. A *Surrender* was made of a Copyhold Eſtate *to Truſtees to the Uſe of the Will*; a *Will was made with only 2 Witneſſes to it.* It was admitted, that a Will of a Copyhold Eſtate does not require three Witneſſes, but this is a Deviſe of a Truſt relating to Lands, ſo within the very Words of the Statute of Frauds; the Heir controverting the Surrender and the Will, this Point was not determined, but two Iſſues ordered, tho' the Chancellor ſeemed to be of Opinion, that the Deviſe of a Truſt muſt enſue the Nature of the Eſtate, and not make it to be neceſſary to have three Witneſſes, as the Copyhold might be deviſed without three Witneſſes, this may be a Queſtion to be determined when the Iſſues are tried. Sel. Caſes in Lord King's Time, 42. Trin. 11 Geo. Appleyard v. Wood.

12. On Appeal to Ld. Chan. the Caſe was, S. M. having Iſſue 3 Daughters, (viz.) Mary, Martha, and Samuela, and having Freehold Lands in A. J. and W. and ſome Copyholds in J. (ſome of which he had ſurrendered to the Uſe of his Will) he made a Will, and deviſed Part to Truſtees for Charities, and to each of his two Daughters, Martha and Samuela, diſtinct Part of his Freehold Lands, and Money and Legacies, to his Wife the Houſe he lived in, and ſeveral Cloſes by Name, till his Daughter Mary ſhould attain 21, and then are theſe Words, *and after then the Houſe and Grounds, and all other my Meſſuages, Cottages, Lands, Tenements and Hereditaments whatſoever in A. J. and W. not herein before otherwiſe diſpoſed of, with their, and every of their Appurtenances, unto my* ſaid *Daughter Mary, and to the Heirs of her Body, to enter upon at her Age of* 21, *and not ſooner.*

MS. Rep. Hill Vac. 1733. Andrews v. Waller.

Mary marries Plaintiff Andrews, and Bill brought by them for an Injunction, and to have the Want of a Surrender ſupplied.

Quære 1. Whether the Words of the Will were ſufficient to paſs the other Copyhold in A. to the Daughter Mary?

2. If Equity ſhould ſupply the Want of a Surrender in this Caſe?

Heard at the Rolls 10 Feb. 1732. and held that the Copyhold not deviſed to Charities did paſs by general Words to Plaintiff Mary, and that Equity ſhould ſupply the Want of a Surrender, and decreed accordingly, and a perpetual Injunction.

Ejectment was tried before Juſtice Cowper, and a Caſe made for the Opinion of C. B. where it was held, that the Words were ſufficient to paſs Copyhold, and the Maſter of the Rolls of the ſame Opinion; and as to the ſecond Point, the Parent is the proper Judge of the Proviſion of his Children, and here is no Children provided for.

Upon Appeal to Lord Chancellor it was objected, that the Copyhold Lands did not paſs, and that Equity ought not to aid a Surrender to the Prejudice of two other Siſters, who with Plaintiff were Heirs at Law, and Plaintiff better provided for than the two other Siſters, excluſive of Copyhold, and here there were other Freehold Lands whereon the general Words might operate.

Lord Chancellor ſaid, the Rule of Evidence is the ſame here as at Law, the proper Evidence of Surrenders, or Title to a Copyhold, is the Court Roll, or a Copy of it, or it muſt appear they exiſted once, and are loſt &c. and ſo make way to go into Parol Evidence.

Plaintiff has no Title at Law. and as to an Equity Title, if it does not appear to be Teſtator's Intent to give this Copyhold to Mary, the Court ought not to give it, but muſt expound and collect Teſtator's Intent from the Words of the Will. It is clear, that the general Words, (viz. of all other) will take in the reſt of Copyhold as well as Freehold. As to Caſes where a Surrender is not ſupplied, they ſtand upon this Reaſon, that the Intention could not be collected to give Lands to Uſes to which Teſtator could not give them, but *when the Intention can be collected, though there are improper Words, yet they paſs in Conſideration of this Court*, where, if there had been a Surrender, they would have paſſed in favour of Creditors &c. and was of Opinion, that the Teſtator intended to compriſe Copyhold in the Deviſe to his Daughter Mary, and if he did ſo, the Rule is general, that *ſuch Deviſe is good to a Wife, younger Children, or Creditors*, but objected that Mary is not the youngeſt Child, ſhe is indeed eldeſt, but piece of a whole Heir at Law, and if ſole Heir, yet it is common in Caſes of Portions, that the Eldeſt is conſidered as the Youngeſt if not provided for. *In Caſe of Borough-Engliſh, the Youngeſt muſt be conſidered as Heir, ſo in Gavelkind*; In regard to what does not deſcend in Common, they ſtand in Place of younger Children; to determine otherwiſe would be to determine upon Words, and not according to the Nature of Things.

As to the Proviſion made for Mary, he don't know that Court hath gone minutely into the Conſideration of that &c. otherwiſe where the Heir is totally diſinherited. In **Boſs and Boſs** the *Heir had but* 6 l. *a Year*, & de Minimis not curat Lex, *and in Effect a total Diſheriſon*, but where there is a Proviſion not unreaſonable, and where the Heir is not left in a deſpicable Condition, the Court has not gone ſo far. In Caſe of **Burton and Floid**, it was laid down by Lord Harcourt in the ſtrongeſt Terms, and there, after an Eſtate Tail a Surrender was ſupplied; and here Defendants claim another Eſtate by the ſame Will, and where a Deviſee claims a Bounty, he muſt take the whole, or reject the whole, according to the Will. Decree was affirmed.

The

The Quantum of a Proviſion of a Child is in the Father's Power and Diſcretion; A Man is bound by Nature to provide for all his Children, and in this Caſe the Father had provided for two, and intended to provide for the third; he intended to make a compleat Proviſion, and give all that he had among his three Daughters, and to leave nothing to deſcend.

(X. e) Equity. Of Bills in Chancery as to Copyholds.

1. A Suit was touching certain Lands which the *Plaintiff claimed by Leaſe, and the Defendant as Copyhold*, and becauſe the Plaintiff failed in his Proof, and the *Defendant ſhewed his Copy and ancient Court Rolls*, proving it to be ancient Copyhold, the Lands were decreed to the Defendant according to the Copy againſt the Plaintiff, his Executors and Aſſigns, till the Plaintiff ſhould prove a better Title. Toth. 122. cites Fotherington v. Edſington.

2. The Plaintiff's Bill was, for that he being a Copyholder leaſed to the Defendant for Years, and the *Defendant hath digged Gravel, and ſold the ſame* away, whereby the Copyholder is prejudiced; the Defendant juſtified, for that the Copyholders are not puniſhable in Waſte, which Cauſe this Court alloweth not of; for though the Copyholders of the Manor are not puniſhable, yet the Leſſee of Copyholders of the Manor are puniſhable, therefore a Subpœna is awarded to ſhew Cauſe, why an *Injunction* ſhall not be granted *for ſtaying his digging of Gravel, and felling Woods* upon the Copyhold Lands. Cary's Rep. 89, 90. cites 19 Eliz. Dalton v. Gill and Pindor.

3. A Decree is made for the Defendant *to enjoy* certain Lands, as well Copyhold, as Cuſtomary. Cary's Rep. 105. cites 21 & 22 Eliz. Bamborow v. Alexander.

4. A *Compoſition formerly made* between Lords and Tenants ought to *bind a Purchaſor or an Heir*; ſo decreed. Toth. 111. cites 40 Eliz. Sterling v. Tenants of Burton.

5. Where a *Bill* is brought *for Surrender of a Copyhold Eſtate held for Lives*, the *Lord muſt be made a Party*, becauſe when the Surrender is made, the Eſtate is in the Lord, and he is under no Obligation to new grant it; *contra in Caſe of Copyholds of Inheritance*, for there the Lord need not be a Party. Mich. Vac. 1720. in Canc.

6. Bill was brought for ſpecifick Performance of Covenants. The *Plaintiff ſold the Defendant a Copyhold Eſtate of the yearly Value of* 16 *l.* (on which was Timber to the Value of 150 *l.*) for 630 *l. and covenanted to ſurrender on or before Michaelmas then next*; the *Defendant paid* 10 s. *in Part* of the Purchaſe, *enter'd on the Premiſes, cut down Timber, ſtocked the Land, and did every Thing as Owner.* The *Plaintiff* proved he gave *Notice in Writing, that he would ſurrender next Court-Day, and attended accordingly*; On the Defendant's Part there were ſeveral Proofs, that he was diſordered in his Senſes, and though there be Proof that the Timber was of the Value of 150 *l.* yet as no Cuſtom is alledged of the Tenants having Power to cut it down, it muſt be according to the Common Law, by which the Tenant has no Power over it, and therefore a plain Impoſition. The Chancellor was of Opinion, it was a great *Over-Value*, and that his cutting down of Timber was a convincing Proof of his Folly, becauſe a direct Forfeiture; but as it is, it is a Matter meerly

ly at Law; the Covenant is to ſurrender at or before Michaelmas; you ſay you were ready at the next Court, which does not appear to have been before Michaelmas; if Surrender had been, Action would have laid at Law; Bill diſmiſſed. Sel. Caſes in Chanc. in Lord King's Time. 3. Mich. 11 Geo. Edwards v. Heather.

7. If *Vendee of a Copyhold by Articles of Agreement* files a Bill againſt the Copyholder for a *ſpecifick Performance*, and makes the *Lord a Party to compel him to admit* according to the Agreement, the Court will decree the Admittance; but there having been *no Tender of a Surrender to the Lord* in this Caſe, and conſequently no Refuſal, the *Lord was ordered his Coſts*. G. Equ. R. 188. Hill. 12 Geo. 1. in Canc. cites Sayle v. Reeves.

(Y. e) Diſputes at Law and in Equity between Lord and Tenants.

1. IT is decreed, that the Defendant and his Heirs ſhall from Time to Time *yearly pay to the* Plaintiff and his Heirs, *Lords of the Manor* of Kenetworth, *the Rent of* 3 *s.* 4 *d.* for the Piece of Ground called the Hawte, together with the *Arrearages* thereof, ſince the 6. of E. 6. and ſhall henceforth do *Suit and Service* to the Court of the Plaintiff and his Heirs, Owners of the ſaid Manor, and the Plaintiff and his Heirs ſhall have and receive the *Fines and Amerciaments* of Service done by the Tenants of the ſaid Hawte. Cary's Rep. 73. cites 6 Eliz. Fol. 145. Litton v. Cooper.

2. The Court compelled the Lord to *admit* a Tenant Copyholder *to ſue at Law* without any Forfeiture of his Copyhold. Mich. 31 & 32 Eliz. Fo. 21. Toth. 65. Gravener v. Rake.

3. A Suit was *to compel the Lord to grant a Licence to let* a Copyhold, but becauſe the *Defendant by his Anſwer ſaid that the Copyhold was forfeited*, the Court would not inforce him to grant a Licence till the Forfeiture was examined. Toth. 107, 108. cites 1592. Ballard v. Agard.

Ibid. cites ſame Year Colcot v. Lea.

4. A Copyholder can have no *Aſſiſe of Common* againſt his Lord, but is to be reliev'd in Equity. Toth. 108. cites 38 & 39 Eliz. Tenants of Petworth v. E. of Northumberland.

Gilb. Treat. of Ten. 292, 293. S. P.

5. *Alteration of a Cuſtom by Conſent* of Lord and Tenants was allow'd in Chancery, and decreed accordingly. Lex Cuſtom'. 323. Cap. 35 cites 10 July. 44 Eliz. Dyer v. Dyer.

Gilb. Treat. of Ten. 292. ſays Quære, whether it will *reduce a Fine uncertain* into a Certainty at the Suit of all the Copyholders; for though there be an Equity in moderating an exceſſive Fine, yet it ſeems there is none to reduce an uncertain Fine to a certain one at the Suit of the Tenants.

6. Lord of a Manor was *decreed to admit Copyholders at a Fine certain, which he afterwards refuſed to do*; and thereupon Copyholders were relieved, who were no Parties to the Decree. Hard. 169. Arg. cites the Caſe of the Earl of Derby v. Wainwright.

2 Bulſt. 336. S. C. and held per tot. Cur. that the Action

7. If a *Lord* of a Manor, where the Cuſtom is for a Copyholder to nominate his Succeſſor, *refuſes to admit a Perſon named by a Copyholder to be his Succeſſor*, he cannot bring an Action on the Caſe againſt the Lord, and has no Remedy to compel the Lord to admit him but by Order in Chancery,

Chancery, and the Remedy againſt a Lord of a Manor for Non-admittance is only in Chancery. Cro. J. 368. pl. 1. Paſch. 13 Jac. B. R. Ford v. Hoskins.

does not lie for refuſing to admit; and Coke Ch. J. ſaid the Plaintiff might go into Chancery. —— Roll Rep. 125. pl. 7. S. C. adjornatur. ——Ibid. 195. pl. 37. S. C. adjudged, per tot. Cur. againſt the Plaintiff. —— Mo. 842. pl. 1137. S. C. reſolv'd that the Action does not lie.

8. The Court compelled a Lord to *admit a* Tenant. Toth. 65. Mich. or Hill. 5 Car. Newby v. Chamberlain.

S. P. Toth. 65. March v. Gage.

9. *Mortgagee of a Copyhold Eſtate* was reliev'd againſt the *Lord* who had *got Poſſeſſion, and a Releaſe from the Mortgagor*, and the Court held, that tho' ſuch Releaſe had extinguiſh'd the Entry of Mortgagor, yet the ſame ſhould enure to the Benefit of him that had the former Right in Truſt only, and for the Uſe of Mortgagee; And decreed the Poſſeſſion to him accordingly againſt the Defendants, and all claiming under them, and that the Lord of the Manor ſhould *account for the Profits* ſince his Entry, deducting only his Fine. N. Ch. R. 7. 5 Car. 1. Lucas v. Pennington & al'.

10. An Iſſue as to *Fines of Copyhold*, whether certain or arbitrary, having been *try'd at Law* the Court would not relieve otherwiſe than for Preſervation of Witneſſes. 2 Chan. Rep. 76. 24 Car. 2. Smith v. Sallet.

11. Tenant for Life of a *Copyhold* with a contingent Remainder to his firſt Son in Tail, having no Son born, and thinking to veſt the whole Fee in himſelf, buys in the Reverſion in Fee of the Copyhold at 550l. but finding this would not by Merger (the Freehold being in the Lord) deſtroy the contingent Remainder, brought his Bill to be reliev'd againſt the Security he had given for the Purchaſe Money, being *deceiv'd as to to the Effect of his Purchaſe*; Per Cur. pay Principal Intereſt, and Coſts, or be diſmiſt with Coſts. 2 Vern. R. 243. Mich. 1691. Mildmay v Hungerford.

12. A Cuſtomary Tenant *opened a Copper Mine* in his Land, *and dug and ſold Ore*, and died, and the Heir continued digging and diſpoſing of great Quantities out of the ſaid Mine. The Lord of the Manor brought a *Bill againſt the Executor* and Heir *for an Account* of the ſaid Ore, and alleging, that theſe Cuſtomary Tenants were as Copyhold Tenants, and that the Freehold was in the Lord. And Lord C. Cowper held that the Executor was liable, and diſtinguiſhed between this which was a taking away the Lord's Property, and other Treſpaſſes as die with the Perſon, as that of Plowing up Meadow, or ancient Paſture, but ſent it to Law to try the Right of the Tenant, there being Proof that the Tenants uſed to fell Timber, and dig Stone, and ſell it. But there never having been any Copper-Mine before diſcovered in the Manor, the Jury could not find that the Cuſtomary Tenant might by Cuſtom dig and open New Copper Mines, ſo that, upon producing the Poſtea, the Court held, that *neither the Tenant without the Conſent of the Lord, nor the Lord without the Conſent of the Tenant, could dig in theſe Mines*, being new Mines. Wms's Rep. 406. Hill. 1717. Biſhop of Wincheſter v. Knight.

13. A *Bill* is brought *by the Lord* of a Manor *to recover a Fine* for a Copyhold *on a Suggeſtion, that the Defendant was admitted by Attorney, but ſometimes pretends the Attorney had no Authority to take ſuch Admittance*; The Defendant anſwers as to Part, and demurs as to Relief. The *Demurrer held good*. 3 Wms's Rep. 148. Mich. 1732. North v. Strafford.

14. A *ſingle Copyholder* is *not relievable in Eqnity for an exceſſive Fine*, becauſe this is determinable at Law; *But, to avoid Multiplicity of Suits, ſeveral*

ſeveral Copyholders may join to be relieved againſt a general Fine that is exceſſive. 3 Wms's Rep. 155. pl. 88. Mich. 1732. Cowper v. Clerk.

For more of Copyhold in general, See **Common. Court. Cuſtoms. Manor. Steward of Courts.** And other proper Titles.

Coroner.

(A.) His Antiquity and Qualification.

Coroners were the Principal Guardians of the Peace, and

1. 14 *E.* 3. *cap.* 8. ENACTS, That *no Coroner ſhall be ſhown unleſs he has Land in Fee ſufficient in the ſame County whereof he may anſwer to all People.*

therefore the Comwon Law did not only require expert Men to be Coroners, but Men of ſufficient Ability and Livelihood, for 3 Purpoſes; 1ſt, The Law preſumes that they will do their Duty, and not offend the Law, at the leaſt for Fear of Puniſhment, whereunto their Lands and Goods be ſubject. 2dly, That they be able to anſwer to the King all ſuch Fines and Duties as belong to him, and to diſcharge the Country thereof, wherewith the Country being their Electors were chargeable. 3dly, That they might execute their Office without Bribery. 2 Inſt. 174.

2. The Coroner, tho' *in Original later than the Sheriff*, was never theleſs very ancient; he was the more Servant or Officer to the King of the 2. His work was to inquire upon View of Manſlaughter, and by Indictment of all Felonies as done contra Coronam, which formerly were only contra Pacem, and triable only by Appeal; As alſo he was to inquire of all Eſcheats and Forfeitures, and them to ſeiſe; He was alſo to receive Appeals of Felonies, and to keep the Rolls of the Crown Pleas within the County. It is evident he was an Officer in Alfred's Time; for that King put a Judge to Death for ſentencing one to ſuffer Death upon the Coroner's Record, without allowing the Delinquent Liberty of Traverſe. This Officer was made alſo by Election of the Freeholders in their County Court, as the Sheriff was, and from amongſt the Men of chiefeſt Rank in the County, and ſworn in their Preſence, but the King's Writ lead the Work. Bacon of Government. 66.

4 Inſt. 271. Cap 59. S. P. becauſe he *deals principally with Pleas of the Crown*, or Matters concerning the Crown.

3. His *Name is derived a Corona*, and ſo called, becauſe he is an Officer of the Crown, and hath Conuſance of ſome Pleas, which are called Placita Coronæ. 2 Inſt. 31.

4. Coroners in every County, and Sheriffs, were ordain'd to keep the Peace, when the Earls diſmiſſed themſelves of the Cuſtody of the Counties

Counties and Bailiffs in Place of Hundreds. 2 Inſt. 31. cites the Mirror. cap. 1. S. 3.

5. A *Common Merchant* being choſen a Coroner was removed, for that he was Communis Mercator. 2 Inſt. 32.

6. They are of ſo great Antiquity, that their *Commencement* is not known; Per Doderidge J. 3 Bulſt. 176. Paſch. 14 Jac.

(B.) His Election.

1. *Weſtm.* 1. *cap.* 10. 3 *E.* 1. *FOraſmuch as mean Perſons and indiſcreet now of late are commonly choſen to the Office of Coroners, where it is requiſite, that Perſons honeſt, lawful and wiſe ſhould occupy ſuch Offices; it is provided, that thro' all Shires* * *ſufficient Men ſhall be choſen to be Coroners of the moſt wiſe and diſcreet Knights which know, will, and may beſt attend upon ſuch Offices, and* † *which lawfully ſhall attach and preſent Pleas of the Crown, and that Sheriffs ſhall have Counter-Rolls with the Coroners, as well of Appeals as of Inqueſts of Attachments, or other Things which to that Office belong.*

It ſeems that at this Day the not being a Knight is not Cauſe for removing a Coroner. For if he have ſufficient Lands within the County it ſufficeth, altho' he be not a Knight notwithſtanding that this Statute which requireth that he be a Knight. For thoſe Words are put into the Statute, to the Intent that he ſhould have ſufficient within the County, and for no other Cauſe. F. N. B. 164. (A.)—— 2 Inſt. 176. S. P.—— 2 Hawk. Pl. C. 42, 43. Cap. 9. S. 3 S. P.

* The Office of a Coroner ever was, and yet is eligible *in full County by the Freeholders, by the King's Writ* De Coronatore eligendo, and the Reaſon thereof was, for that both the King and the Country had a great Intereſt and Benefit in the due Execution of his Office, and therefore the Common Law gave the Freeholders to be Electors of him. 2 Inſt. 174.

† Seeing that Coroners are elected by the County if they be inſufficient, and *and not able to anſwer* ſuch *Fines* and other Duties *in reſpect of their Office as they ought, the County,* as their Superior, *ſhall anſwer the ſame.* 2 Inſt. 175.—— Ibid. 466. S. P.—— 2 Hawk. Pl. C. 43. Cap. 9. S. 8. S. P.

By this it appears that the Coroner is Judge of the Cauſe, and not the Sheriff, and this agrees with our old and later Books; only the Sheriffs have Counter-Rolls with the Coroners by Force of this Act, and therefore a Certiorari may be directed to the Sheriff and Coroner to remove an Appeal by Bill before the Coroner, becauſe the Sheriff hath a Counter-Roll; But if the Certiorari be directed to the Sheriff only in caſe of Appeal or Indictment of Death, it is not ſufficient to remove the Record, becauſe he is not Judge of the Cauſe, but has only a Counter-Roll. 2 Inſt. 176.

2. 28 *E.* 3. *cap.* 6. *Coroners ſhall be choſen in full Counties, by the Commons of the moſt meet and lawful People that can be found there, ſaving to the King and other Lords, who ought to make ſuch Coroners their Seigniories and Franchiſes.*

3. 33 *H.* 8. 12. *Coroner* of the King's Houſhold *ſhall be appointed by the Lord Steward.*

4. The *Writ De Coronatore eligendo lies, where* a Man who is *Coroner* of any County *dies, or is diſcharged* of his Office, then that Writ ſhall be awarded unto the Sheriff, that he in full Couuty by the Freeholders of the County, chuſe another in his Place, and to certify the Election, and his Name, who is choſe, in the Chancery. F. N. B. 163. (K)

5. The *Juſtices of B. R.* are the Sovereign Coroners of the Land. 4 Inſt. 73. Cap. 7.

6. *Coroner or not* Coroner ſhall be *tried by the Country*; For he is choſen in the County by the Country. Jenk. 90. pl. 74

7. The *Chief Juſtice of B. R.* is the Sovereign Coroner of all England. 4 Rep. 57. 8. by the Reporter. Trin. 30 Eliz. S. P. by Glyn Ch. J. 2 Sid. 101. Trin. 1658.

8. It

8. It is obſervable, that they *do not receive their Authority from the King's Commiſſion, but from the Election of the County*, in Purſuance of the King's Writ, iſſuing out of, and afterwards returned into the Chancery. 2 Hawk. Pl. C. 43. cap. 9. S. 5.

(C) His Duty and Authority.

Before this Statute the Coroner had

1. *Magna Chart. cap.* 17. NO *Coroner ſhall hold Pleas of our Crown.*

the ſame Authority he now hath, in Caſe when any Man come to violent or untimely Death, ſuper viſum Corporis &c. Abjurations and Outlawries &c. Appeals of Death by Bills &c. This Authority of the Coroner, viz. the Coroner ſolely to take an Indictment ſuper viſum Corporis, and to take an Appeal, and to enter the Appeal, and the Court remains to this Day; but he can proceed no further either upon the Indictment or Appeal, but to deliver them over to the Juſtices; and this is ſaved to them by the Statute of W. 1. cap. 10. And this appears by all our old Books, Book-Caſes, and continual Experience. 2 Inſt 32 —— Ibid. 176. S. P.

This is underſtood of Felonies of the Death of Men; for the Inquiry of that Felony belongs to the Office of the Coroner of the Verge.

2. 28. *E.* 1 *cap.* 3. *S.* 8. Enacts, that *foraſmuch as heretofore many Felonies committed within the Verge have been unpuniſhed, becauſe the Coroners of the County have not been authoriſed to inquire of ſuch Manner of Felonies done within the Verge, but the Coroner of the King's Houſe which never continues in one Place, by reaſon whereof there can be no Trial made in due Manner,*

2 Inſt. 549, 550.

Hereby it appears, that by the * Common Law the Coroner of the County could not intermeddle within the Verge, but the Coroner of the Verge, and that if he took an Indictment of the Death of a Man, it was not allowable in Law; and ſo it is if the Coroner of the King's Houſe take an Indictment of the Death of a Man out of the Verge, it is coram non Judice. And if an Indictment of the Death of a Man being ſlain out of the Verge, be taken before the Coroner of the King's Houſe, and the Coroner of the County, and ſo enter'd of Record, it is ſufficient, becauſe the Coroner of the King's Houſe joined with him, who had no Authority. 2 Inſt. 550,

* S. P. adjudg'd, Paſch. 24 Eliz. in B. R. **Swift's Caſe**, who was indicted before the Coroner of the County of Middleſex for a Murder done in Tuthill in the ſaid County, which Indictment being removed into B. R. he pleaded, that Tuthill was, and yet is within the Verge, and this was adjudged a good Plea, and he was diſcharged of that Indictment. 4 Rep. 46 b.

And yet the Felony was not diſpuniſhable; for at this

3. *Nor the Felons put in Exigent, nor outlaw'd, nor any Thing preſented in the Circuit, the which has been to the great Damage of the King, and nothing to the good Preſervation of the Peace.*

Time it might, after the Remove of the King, be inquired of in B. R. if the Bench ſate in that County, or before Juſtices of Oyer and Terminer &c. or if the Coroner of the Verge had taken an Indictment, though the King went out of the Verge, yet the Indictment ought to be removed into B. R. for that is the Center whereunto all Records of that Nature do fall, and there the Offence might be heard and determined. 2 Inſt. 550.

But this Act was made for more ſpeedy Proceeding; for being removed into B. R. there ought to be 15 Days &c. 2 Inſt. 550.

In Appeal of Murder the Defendant pleaded, that at Hampton

S. 9. *It is ordain'd, that from henceforth in Caſes of the Death of Men, whereof the Coroner's Office is to make View and Inqueſt, it ſhall be commanded to the Coroner of the Country, that he, with the Coroner of the King's Houſe, ſhall do as belongeth to his Office, and inrol it.*

Court, within the County of Middleſex, within the Verge, by Inquiſition taken before R. V. then Coroner of the Houſe of the King, and alſo one of the Coroners of Middleſex Super viſum Corporis, he was indicted of Manſlaughter, and arraign'd thereupon before Commiſſioners of Oyer and Terminer in Middleſex and confeſs'd the Indictments, and pray'd his Clergy. Reſolv'd, that this Indictment was well taken, and within the Statute of Articuli ſuper Chartas, which ſays, that in Caſe of Death

Death within the Verge, it ſhall be ſent to the Coroner of the County, who with the Coroner of the Houſhold of the King ſhall do his Office as belongs to him; and though it was objected that the Statute requires two Perſons, and therefore one cannot execute it; For ſecurius expediuntur Negotia commiſſa pluribus, et Plus vident Oculi quam Oculus; and that Una Perſona non poteſt ſupplere Vicem duorum, yet in this Caſe of ſeveral Authorities it was reſolv'd, that the Indictment was well taken; For the Intention and Meaning of the Act was perform'd, and the Miſchief recited in the Act avoided as well as when one Perſon is Coroner of the Houſhold, and the County alſo, as if they had been two different Perſons; For though the Court removes, yet he as Coroner of the County may proceed &c. 4 Rep. 45. b. 46. a. cites Paſch. 20 Eliz. B. R. Burgh v. Holcroft.——3 Inſt. 134. cap. 72. S. C.

S. 10. *And that Thing that cannot be determined before the Steward, where the Felons cannot be attached, or for other like Cauſe, ſhall be remitted to the Common Law.*

S. 11. *So that the Exigents, Outlawries, and Preſentments ſhall be made thereupon in Eyre by the Coroner of the County, as well as of other Felonies done out of the Verge;*

S. 12. *Neverthelefs, they ſhall not omit by Reaſon hereof to make Attachments freſhly upon the Felonies done.*

4. The Coroner inquires *of all thoſe who are killed feloniouſly, or by Miſadventure, out of Houſes, and who firſt found the Body, and if they are taken*, and if they are Men or Women, little or great, *and let by Mainprize till the next Eyre of the Juſtices*, and the *Name of the Parties ſhall be inroll'd*, as the Name of the Coroner ſhall be. Br. Corone, pl. 90. cites 22 Aſſ. 94.

5. A Man was *indicted before the Coroner in Roll of the Coroners*, and upon this was *outlaw'd upon the Roll of the Coroner*; Quære if the Coroner may award Proceſs of Outlawry. Br. Corone, pl. 109. cites 27 Aſſ. 47. *Coroners may take Appeal of Death, and award Proceſs to the Exigent*, but the Plea ſhall not be determin'd before them. Br. Corone, pl. 82.

6. Coroner took an *Indictment* that a Man taken for Felony was conducted to the Church by certain Friars, who were arraign'd upon it, and becauſe the Coroner had no Warrant *to receive any Indictment unleſs upon View of the Body, or by Writ ſent to him* &c. therefore *Writ iſſued* to the Coroner to certify, *if he had other Warrant or not.* Br. Indictment, pl. 29 cites 27 Aſſ. 55. Br. Corone, pl. 111. cites S. C.

7. If a *Man* be *taken by Proceſs*, and after *dies in Priſon*, the Coroner ought to ſee him, which ought to be returned by the Sheriff to the Court. Br. Corone, pl. 167. cites 3 H. 5.

8. A Writ iſſues to the Coroners of the County to arreſt A. the *Arreſt* is made *by one* of them, *or* a *Servant of one* of them, it is good; but the *Return* of it ought to be *in the Name of them all*, and a *Warrant* made to the Servant of one of them to make the Arreſt, ought to be in the Name of all. Jenk. 85. pl. 65. 39 H. 6. 41.

9. In *Re-diſſeiſin*, Error is brought, the Error aſſigned is, that A. who ſat with the Coroners, was not a Coroner, and yet gave Judgment; this is Error; where two join in Judgment, When one of them has no Juriſdiction, it is Error; by the Juſtices of both Benches. Nemo debet ſe immiſcere Rei alienæ. Jenk. 90. pl. 74. 32 H. 6. 27.

10. *And* if the Arreſt was made by a Servant of one of them, and it is ſo returned, and the *Return ſays that A. made Reſcous upon* ſuch *Arreſt made by the Servant of one* of them, upon a Precept made by one of them, this is a *bad Return*, and yet an *Attachment* ſhall be awarded againſt the *Reſcuſſer*, and he ſhall be committed to Priſon, although he tenders a *Traverſe* to the ſaid Return; and this becauſe of the Deteſtation which the Law has for Diſobedience and Force againſt the King's Mandate, and the Credit which the Law gives to the Sheriff's Return; There

may be a Traverſe to a Reſcous returned by Weſtm. 2. Ch. 40. Jenk. 85. pl. 65.

11. *One* Coroner can hold an Inqueſt *upon the View of a dead Body*; *Two* Coroners *ought to be Judges in Re-diſſeiſin*; *One* ſerves *to pronounce an Outlawry*, but the *Entry* ought to be *in the Name of All*, and ſo of all Proceſs directed to the Coroners. If there be *only one Coroner in the County*; that one will ſerve in all thoſe Caſes. Jenk. 85. pl. 65.

12. If a Man be *kill'd, and interr'd before that the Coroner has taken Inquiſition* upon View of the Body, the Coroner *may* lawfully *take him out of the Sepulture, to ſee the Wounds*, to make a good Indictment; by all the Juſtices. Br. Corone, pl. 166. cites 21 E. 4. 70, 71.

If the Coroner *finds ſufficient Indictment*, by which *the Body is buried*, he *may dig him up again and find thereof ſufficient* 40 *Days* after the Burial, Quod Nota, by all the Juſtices. Br. Corone, pl. 172. cites 2 R. 3. 2. ——— Jenk. 162. pl. 8. cites S. C. but ſays it was 14 Days after the Burial. ——2 Hale's Hiſt. Pl. C. 58. cites S. C. of 21 E. 4. 70, 71. but mentions 14 Days only.

13. A Coroner upon an *Indictment of Murder ſuper viſum Corporis*, *finds* the Murder, and *that A. received the Murderer* after the Killing, *and* that *A. fugam fecit:* This finding of the Coronor, as to the Receipt and the Flight, was held void, by all the Judges of England. Upon ſuch Indictment the Coroner has nothing to do, except as to him who killed the Man. The finding of the Killing, and of Flight, as to the Man-ſlayer, or, * as to the Acceſſories before the Fact, is good; but † not as to *Acceſſories after the Fact.* Jenk. 177. pl. 54.

* Keilw. 67. b. pl. 9. Trin. 20 H. 7. S. P. by Fineux and Kingſmill, and that though the Procurement was out of that County.

† S. P. Mo. 29. pl. 95. Trin. 3 Eliz. Anon. —— Dal. 32. pl. 19. S. P. agreed, and cites Stamford, Fol. 183. accordingly.

14. 33 *H.* 8. *cap.* 12. *Coroner of the* King's Houſhold, *without the Aſſiſtance of any other Coroner, ſhall take the Inquiſition, and by a Jury of the Yeomen, Officers of the Houſhold.*

15. 1 *& 2 P. & M. cap.* 13. *S.* 5. *Coroner muſt take the* Evidence in Writing, *and* bind over the Witneſſes.

16. The Coroner had *no Power to take* any *Confeſſion for Treaſon*, *albeit* the Coroner had a *ſpecial Commiſſion from the King to do it.* 2 *Inſt.* 629.

17. The *Mayor of London* is the Coroner, but he ſhall not pronounce Judgment on *Outlawry*, but the Recorder. 8. Rep. 126. a. in Waganer's Caſe cites D. 15 Eliz.

D. 317. a. pl. 6. Mich. 14 & 15 Eliz. Puttenham's Caſe. ——Co. Litt. 288. b. S. P.

18. The *Coroner gave Evidence to the Jury ſuper viſum Corporis, but they would give up no Verdict*, wherefore *he adjourned them* from Time to Time, and from Place to Place, but *they would not agree upon a Verdict.* Upon this a Letter was ſent to him from Fleming Ch. J. not to take a Verdict of them; upon which he went to the Aſſiſes at at Hertford, and did acquaint the Judges with it for his Diſcharge, the Jurors were fined, and the Indictment there taken at Hertford. 3 Bulſt. 173. Paſch. 14 Jac. the King v. Taverner.

19. If a *Coroner has once to do with a Writ*, the Sheriff cannot intermeddle; Per Lea Ch. J. Palm. 370. Trin. 21 Jac. B. R.

20. The Coroners are not the proper Officers of the Court in any other Caſe but where the Sheriff is abſolutely improper, not where there is no Sheriff at all; If the *Sheriff dies*, the Coroner can't execute &c. 1 Salk. 152. pl. 2. Paſch. 3 W. & M. in B. R. The King v. Warrington.

21. Coroner

21. Coroner need not go *Ex Officio* to take the *Inqueſt*, but ought to be ſent for, and that when the Body is freſh ; and to bury the Dead before, or without the ſending for the Coroner, is a Miſdeameanor. The Body may be *dug up again*, but it ought to be upon freſh Purſuit, not at ſuch a Diſtance of Time, for it is a Nuſance, and may infect People. **In Barkley's Caſe**, there was the Leave of Court for that purpoſe ; Per Holt Ch. J. 1 Salk. 377. pl. 21 Paſch. 1 Ann. B. R. The Queen v. Clerk.

22. Out of the Pares Comitatus one was choſe to be the Coroner, who recorded all the Pleas of the Crown in the Torn, all Inquiſitions of Felo's de ſe, and People coming to an untimely End ; and likewiſe all Outlawries ; And theſe Coroners *were in Nature of Comptrollers to the Sheriff, keeping a Record of the Fines and Amerciements in the Sheriff's Court.* Gilb. Hiſt. View of the Exchequer. 80.

(D) Authority. Where joint or ſeveral. And where the Act of one &c. is effectual, and ſhall bind or charge the other.

1. A Coroner may *adjudge Outlawry upon Exigent.* Br. Retorn de Briefs, pl. 42. cites 14 H. 4. 34.

2. *And* one only may *ſit upon the Body of a Man ſlain.* Ibid.

3. *And* one only may *reſummons an Appeal.* Ibid.

4. *But* thoſe Acts they do judicially and as Judges, but the Return they do as Miniſters, and therefore there ſeems to be a Diverſity ; *Quære.* Ibid.

5. Note, If there are 4 *Coroners* in one County, and a Writ is directed to them, if *one dies*, yet *the other three may execute the Writ*, becauſe there ſtill remains the greater Number ; *but if* before the Execution of the Writ *three ſhall die, ſo that there is only one remaining, he cannot* execute the Writ *until others are elected*, 14 H. 4. 39. If there are 4 Coroners, and a Writ is directed to them, *three Coroners cannot make a Return of the Execution of the Writ*, 31 Aſſ 20. *But if one* of them *makes Execution* of it, *and the Return is by all* of them, there it is good ; As if one of them only ſits at the County-Court on the Exigent. F. N. B. 163. (N) in the new Notes there (c) cites 14 H. 4. 34. per Hank. in a Capias, & 39 H. 6. 41.

A Venire Facias to try an Iſſue is returned by the Coroners of a County ; there are four of them, and only two *return the Venire Facias*, and the Plaintiff has a Verdict and Judgment ; this is not Error ; adjudged and affirmed in Error. This was a good Cauſe to ſtay the Trial, but not after Trial to reverſe Judgment ; and this Caſe is now aided, if need be, by the Statute of Jeofails. Jenk. 338. pl. 85.——Cro. J. 383. pl. 12. Mich. 13 Jac. B. R. in the Exchequer Chamber, Lamb v. Wiſeman.

6. *Writ iſſued to the Coroners* of the County of S. *to arreſt W. N.* and J. G. *One of the Coroners* of the County aforeſaid *return'd the Writ in his own Name only*, viz. *that he had Precept to M. his Servant to take him, and he took him, and Reſcous was made by F. C. and K.* upon which Attachment iſſued againſt them, and they were taken, and the Attachment return'd, and after it was awarded that the Reſcuers ſhould go to the Fleet; but by the Reporter this is as upon Suggeſtion made to the Court, and not as upon the Return ; For it was agreed, that the Return is not good ; quod nota. Br. Retorn de Briefs, pl. 66. cites 39. H. 6. 40.

7. The

7. The *Judgment of two Coroners* is good, tho there are four Coroners in the County; Contra of their * *Return*; For this ſhall be by all the Coroners. Br. Corone, pl. 200. cites 4 E. 4. 43.

6 Mod. 37. Mich. 2 Ann. B. R. Anon. per Holt Ch. J. if there are 2 Coroners, one whereof being a Beggar, ſuffers an Eſcape, it is very hard to charge the other with it, and he ſaid the Caſe came before him once, and he would not take upon him to determine it, tho' his Brother Levins reports, that he would have over ruled him in the Exception

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Where a *Jury finds a Man ſlain upon the View* of a Coroner, they *ought to find who kill'd him, or that he killed himſelf*; *or* or they may find that he who is named in the Indictment killed himſelf *Se Defendendo.* Jenk. 202. in pl. 24. cites 37 H. 8. Br. N. C. 297.

2. 3 *H.* 7. *cap.* 1. *Every Coroner, upon View of the dead Body, ſhall inquire of the Perſon that hath done the Death or Murder; Alſo of their Abettors and Conſenters, and who were preſent when it was done; and the Names of the Perſons ſo preſent and found ſhall inroll and certify.*

3. *When one is ſlain in the Day-time, and the Murderer eſcapes untaken, the Townſhip that ſuffers it ſhall be amerced, and the Coroner ſhall inquire thereof upon the View of the Body dead.*

4. *Alſo Juſtices of Peace have Power to inquire of Eſcapes, and to certify them into B. R. and after the Felonies found the Coroners ſhall deliver their Inquiſitions before the Juſtices of the next Goal Delivery there, who ſhall proceed againſt the Murderers, or elſe certify ſuch Inquiſitions into B. R.*

5. In Caſe of Homicide no *Goods* are *Forfeited* till it be lawfully found by the Oath of 12 Men that he is Felo de ſe, and this belongs to the Coroner Super Viſum Corporis to inquire thereof, and if it be found before the Coroner Super Viſum Corporis, that he was Felo de ſe, the Executors or Adminiſtrators of the deceaſed ſhall have *no Traverſe* thereunto. 3 Inſt. 34, 35. cap. 8.

* Upon Exception that the Inquiry was not ſo, the Inquiſition was quaſh'd Poph. 209, 210. Hill. 2 Car. B. R. Anon.

6. As the Sheriff may in his Tourn inquire of all Felonies by the Common Law, ſaving of the Death of a Man, ſo the Coroner can inquire *of no Felony, but of the Death of a Man*, and that * *ſuper viſum Corporis.* He ſhall inquire alſo of the *Eſcape of the Murderer*, of *Treaſure Trove*, *Deodands*, and *Wrecks of the Sea.* 4 Inſt. 271. cap. 59.

7. Inquiſition Super viſum Corporis was held to be void, becauſe it was *not alledg'd where* the Inquiſition was taken, nor *by what Perſon*, nor *their Names*, nor *that they were ſworn.* Cro. E. 31. pl. 4. Trin. 26 Eliz. B. R. Pinner's Caſe.

8. An Inquiſition of Murder was *taken before T. D. Coroner of the Lord Berkley*, but *ſhewed not* that he was Coroner of the County, or of what Liberty; Nor was it ſhewn how *the Lord Berkley can make a Coroner, by Patent or Preſciption; and* the Indictment Quod percuſſit cum Gladio *without ſaying Felonice*; and for theſe Cauſes the Indictment was diſcharged. Cro. E. 193. pl. 7. Mich. 32 & 33 Eliz. B. R. Dearing's Caſe.

9. Inquiſition finding that the Perſon was poſſeſſed of a *Leaſe generally* as yet continuing, without ſhewing the certain Beginning and Determination, is good enough, and the ſafeſt Way. For finding the Date wrong vitiates the Sale. Cro. E. 584 pl. 13. Mich. 39 & 40 Eliz. B. R. Palmer v. Humphrey.

10. In-

10. Inquiſition was taken before the Coroner in Oxfordſhire upon the Death of the Earl of B. and being remov'd into B. R. it was mov'd to quaſh it, for that it was *Præſentatum exiſtit per Juramentum A. B. C. naming the reſt of the Jury, but omitted (Proborum & Legalium Hominum) nor did it ſay Quod ſeipſum percuſſit.* Dodderidge and Haughton held it inſufficient for both Reaſons, and though the Indictment is Virtute Officii by the Coroner, yet he is bound to the Rule of the Law in the Execution of his Office, and cannot impannel Outlaws and Villains, and the Words in the Writ commanding the Sheriff to inquire per Sacramentum Proborum & Legalium Hominum, ſhew that the Law intended of what Condition it ſhould be. Palm. 282. Paſch. 20 Jac. B. R. the Earl of Berkſhire's Caſe.

Cro. J. 635. pl. 2. Paſch. 20 Jac. B. R Francis Oily's Caſe, ſame Points, and ſeems to be S. C and for thoſe Reaſons the Court held the Indictment to be vitious, eſpecially for the firſt,

and it was diſcharged upon that Motion, without Day given, becauſe it was ſaid they were very clear.

11. Inquiſition before the Coroner *found, that S. H. paſſing a Bridge between W. and B. in Com. H. by Reaſon of a Breach in the Bridge, fell into the River, where he was drowned, and that the Bridge is in the Vill of &c and in the Magno Decaſu by Default of the Inhabitants there*; It was held, that the Coroner may find ſuch a Nuſance as occaſions the Death of a Man, and that the Townſhip ſhall be amerced thereupon, but becauſe it was not found that the Town was bound to repair this Bridge, the Indictment, as to that, was quaſhed. Allen 51. Hill. 23 Car. B. R. Samuel Hall's Caſe.

12. M. B. of Gray's-Inn being drowned in a Ducking-Pond, the *Coroner's Inqueſt found* him *Felo de ſe*, but upon ſeveral *Affidavits produced, that he was diſtempered in his Head*, the Court was moved, that the Inquiſition might not be filed, eſpecially ſince the *Coroner would not ſuffer any Witneſſes* to be examined in the Behalf of the Adminiſtrator of B. *to prove that he was diſtemper'd* in Mind, and for that Reaſon they granted a *new Trial*; but becauſe the Inqueſt could not be Super viſum Corporis, it was *ordered, that the Inqueſt ſhould be made by* 6 *of the former Jury, of which there were* 18; that 14 *of them had found him Felo de ſe, but* 4 *diſſented, ſo* 3 *of thoſe* 4, *and* 3 more *of thoſe who had found him Guilty, and* 6 *new Jurors were appointed, and that they ſhould have Counſel and Witneſſes on both Sides*, which ought to be done by all Coroners, ſince the Law has ſo great Regard to Inquiſitions taken before them, that they are not traverſable; and it was inſiſted for the Adminiſtrator, that this new Inquiſition might be taken before the Ch. J. who admitted, that he could do it in any Place, he being chief Coroner of England, but would not grant that Part of the Motion, becauſe it was the Ignorance of the Coroner not to hear any Witneſſes againſt the King, and not any Misbehaviour of him in his Office, which was the Occaſion of this Complaint; thereupon the Jury proceeded before the Coroner, and upon this 2d Inqueſt he was found Felo de ſe. 2 Sid. 90. 101. 144. Hill. 1658. Berkley's Caſe.

Mod. 82. pl. 47. Newdigate ſaid, that in the Caſe of Miles Bartly the Inquiſition was not filed, and that that was the Reaſon why a new one was granted.—Hale's Hiſt. pl. of the Crown 415. cites S. C. and Hale ſays he remembers it was ruled, that in Caſe of an Inqueſt before the Coroner Super viſum Corporis,

wherein the Party was found Felo de ſe, the Inquiſition was quaſhed in B. R. becauſe upon Examination it appeared, that the Coroner refuſed to let the Jury hear Witneſſes on the Part of him that was dead, to prove that he was not Felo de ſe, for the Coroner ought to hear Evidence on both Sides, partly becauſe it was doubted that the Inquiſition in this Caſe is concluſive, and a Conviction, and not Traverſable, and the Court of B. R. who are the Sovereign Coroner, did ſet aſide that Inquiſition, and ordered the Coroner to inquire De novo ſuper viſum Corporis, becauſe the Body was yet to be viewed. ——— S. C. cited 2 Hale's Hiſt. Pl. C. 60.

13. It was moved to *amend an Inquiſition* taken by the Coroner in York Super viſum Corporis; The Court order'd that the Coroner attend ſuch a Day, and amend it *in Court in all Points but the Matter of the Verdict*. Sid. 225. pl. 18. Mich. 16 Car. 2. B. R. The King v. Harriſon.

Sid. 259. pl. 6. Trin. 17 Car. 2. B R. The King v. Glover, after ſeveral

Motions it was agreed, per Cur. that all Matters of Form may be amended in the Office by the Coroners, but not Matters of Subſtance.

14 Where

14. Where a Coroner *omits to inquire*, B. R. as ſupreme Coroner throughout England may inquire, or may make Commiſſioners to inquire, or Commiſſioners of Oyer or Terminer may inquire; but then it is not Super viſum Corporis, and therefore may be traverſed. Per Cur. Vent. 182. Hill. 23 & 24 Car. 2. B. R. Stanlack's Caſe.

15. A Motion was made to quaſh an Inquiſition taken before the Coroners Super Viſum Corporis of one that killed himſelf, which *found* that he was *Felo de ſe*; *but* the Court were informed, that the Party *was non compos* Mentis, *and* that there had been an *undue Practice by the Coroner*, of both which great Proof was made, and upon that it was *quaſhed*. Vent. 352. Mich. 32 Car. 2. B. R. Anon.

16. The Defendant was *Felo de ſe*, and the Coroner's Inqueſt *found* him *a Lunatick*, and now, Mr. Jones moved for a *Melius inquirendum*, but it was *denied*, becauſe there was no Defect in the in the Inquiſition; *but* the Court told him, that if he could produce an *Affidavit that the Jury did not go according to their Evidence, or of any indirect Proceedings of the Coroner*, then they would grant it; But it was afterwards quaſhed, becauſe they had *omitted the Year of the King*. 3 Mod. 80. Paſch. 1 Jac. 2. B. R. The King v. Hetherſall.

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17. If a Coroner's Inqueſt is *quaſhed*, he muſt *take a new one Super Viſum Corporis, but if a Melius Inquirendum is granted upon a Male ſe geſſit* of the Coroner, the new Inquiry muſt be before the Sheriffs or Commiſſioners, upon Affidavits, and not Super Viſum Corporis, becauſe *none but a Coroner can inquire Super Viſum Corporis*, and he is not to be truſted again. 1 Salk. 190. Mich. 1 W. & M. in B. R. The King v. Bunney.

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18. Caption of an Inquiſition is not to be *amended*; per Aſtry and Cur. Comb. 70. Mich. 3 Jac. B. R. Anon.

19. It was moved to quaſh an Inquiſition taken before a Coroner, whereon the Jury find that a *Poſt in the Highway was Unica Cauſa movens ad Mortem*, and he excepted to it, becauſe it was *Nos certe credimus eſſe Cauſam Mortis*, whereas it ought *to be certain*, and therefore it was quaſhed. 12 Mod. 112. 1 Hill. & W. 3. Anon.

20. The *Coroner ought to accept ſuch a Preſentment as the Jury makes*; Per Cur. abſente Holt Ch. J. Comb. 386 Mich. 8 W. 3. B. R. Smith's Caſe.

21. A Perſon having kill'd himſelf, as there was reaſon to believe, Feloniouſly, for that he had made a Formal Will juſt before, and the Coroner *having ſworn the Jury to inquire*, finding the Evidence given very ſtrong, *took off ſome of the Inqueſt*; And per Holt, it is not in a Judge's Power to take off a Juryman after he was ſworn; and tho' this Coroner be a weak ſilly Man, yet that is no Reaſon why there ſhould not be an Information againſt him, for ſuch Men muſt learn, they muſt not thruſt themſelves into Offices; and the Return of the Inquiſition, finding the Deceaſed Non Compos, not being filed, it was quaſhed, per Cur. 12 Mod. 423 Paſch. 13 W. 3. The King v. Stukely.

22. *And* Holt cited a **Caſe of one Tomb's** who had kill'd himſelf at Highgate, in the Year 1655. and the Inqueſt was ſet aſide *for Practice*. 12 Mod. 493.

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5. An *Inquiſition on a Melius Inquirendum is* traverſable, *but not* an Inquiſition *Super Viſum Corporis*. Carth 72, 73. Mich. 1 W. & M. in B. R. cited the Caſe of the King v. Heatherſall, and this agreed by the Court to be good Law.

(G) Puniſh'd for Miſdemeanors in his Office in Civil Caſes.

1. NOTE; an *Attachment* was awarded againſt the Coroners of York, becauſe A. was 5°. *exactus*, but they *would not give Judgment* of the Outlawry, and an Affidavit of that was made. And Millington, an ancient Attorney ſaid, that the Coroners of Stafford for ſuch an Offence were fined every one 10 l. but after the Judgment of the Outlawry pronounced they *may ſtay the Return* of the Exigent for to be adviſed, if the Caſe requires. Noy. 113. Trin. 2 Jac. C. B. Anon.

2. In *Caſe againſt 4 Coroners*, for that J. S. was outlaw'd at the Plaintiffs Suit, and a *Capias Utlagatum delivered* to the Coroner, *and tho'* they might eaſily have arreſted him, and that *he was once in Company with one of them, falſely returned a Non eſt Inventus*. It was objected, that the Action ought not to be brought againſt all four, for it was ſaid the Writ was deliver'd but to one, and the Allegation was, that the Plaintiff was in Company with one of them, &c. But it was anſwered, that all four made but one Officer, and beſides, they *all join'd in making the falſe Return*; And Judgement for the Plaintiff Niſi. Freem. Rep. 191, 192. pl. 195. Paſch. 1675. C. B. Naylor's Caſe.

(H) Where Writs ſhall be directed to the Coroners.

1. *EXTENDI Facias* upon a Statute Merchant *iſſued*, and the *Sheriff did not return the Writ*, and the Party made thereof Suggeſtion, and pray'd Writ to the Coroners, and could not have it, but only a Re-extent. Br. Statute Merchant, pl. 34. cites 27 E. 3. and Fitzh. Suggeſtion 20.

2. If the *Sheriff does not ſerve the Replevin at the Pluries*, Proceſs ſhall iſſue to the Coroners, and there the Sheriff has loſt his Power to ſue any Proceſs in it after, by the beſt Opinion. Br. Office and Off. pl. 43. cites 43 E. 3. 26.

Br. Replevin pl. 9. cites S. C. ——— Br. Withernam, pl. 2 cites 43 E. 3. 46.

3. Where the *Sheriff does nothing in Replevin at the Alias, nor at the Pluries, Proceſs ſhall iſſue to the Coroners to attach the Sheriff*, and to make Replevin. Br. Proceſs, pl. 21. cites 43 E. 3. 26.

4. Note, that Proceſs *directed to the Coroners* to ſerve, this *ought to be ſerv'd by all* the Coroners; *but* where they are to *give Judgment*, the Judgment, of two of them ſuffices where they are four; For in the one Caſe they are Judges, and in the other only Miniſters. Br. Proceſs, pl. 172. cites 14 H. 4. 34.

5. Proceſs

5. Proceſs ſhall not be made to the Coroners *where there is no Sheriff*, *or where* the Sheriff is *dead*; for the Sheriff is an Officer immediate to the Court, for Proceſs ſhall not iſſue to the Coroners unleſs *in ſpecial Caſe*; As where the Plaintiffs ſays, that the Sheriff is his Couſin, and prays Proceſs to the Coroners, and the other does not deny it, there Proceſs ſhall iſſue to the Coroners, and otherwiſe not. Br. Proceſs, 70. cites 22 H. 6. 51. By all the Juſtices. Br. Office and Off. pl. 14. cites S. C.

6. If a *Sheriff of a County in a City be in Contempt*, the Attachment is to go to the Coroner, and not to the Mayor or chief Officer of the Corporation in ſuch City or Town, and if the Offender *be out of his Office*, the Attachment ſhall be directed to the new Sheriff. 2 Vent. 216. Mich. 2 W. & M. in C. B. Anon.

7. In the Caſe of 2 *Coroners*, if the one *be challenged*, the other muſt act, and yet both make one Officer. 1 Salk. 152. pl. 2. Paſch. 3 W. & M. in B. R. in Caſe of The King and Queen v. Warrington. If one or *three are challenged*, yet the others may execute the Writ, and one Coroner may do an Act alone in the Name of the whole, and ſet the Names of the others thereto. Arg. ſays it is agreed ſo in the Books. 2. Show. 286. pl. 283. Paſch. 35 Car. 2. B. R. in the Caſe of Rich v Player.

(I) Diſcharg'd or Remov'd. For what Cauſe, and How. And what ſhall determine his Office.

1. A Coroner *is not made by Commiſſion but by Writ* and when he is Elected by Writ, it is *return'd in Chancery, and is a judicial Act of Record*, and therefore when the King dies this ſhall remain, where all manner of Commiſſions ceaſe by Demiſe of the King, As Commiſſions of Juſtices, and the like; but judicial Acts ſhall remain, and ſo the Coroner *ſhall remain till he be remov'd by Writ of the King*. Br. Office and Off. pl. 25 cites 4 E. 4. 43. and 44. Br. Commiſſion pl. 19. cites S. C. ——Br. Corone, pl. 200. cites S C.—F. N. B. 163. (N) in Marg. of the laſt Edition cites S. C. accordingly.——2 Hawk. Pl. C. 3 cap. 1. S. 11. S. P. and Ibid. 43. cap. 9. S. 5. S. P. ——2 Inſt. 175. S. P.——Dal. 15. pl. 7. Anno 1 Mar. S P. by Portman, and not denied by Bromley Ch. J. and cites D. 1 Eliz. fol. 152. pl. 2. accordingly.——Lev. 120. Mich. 15 Car. 2. B. R. the S. P. reſolv'd accordingly.

2. On a Suggeſtion that a Coroner *had not ſufficient Lands* within the Hundred, a Writ iſſued to chuſe another, and one was choſen. Rhodes and Windham, held that this is a good *Diſcharge*; tho' F. N. B. 163. (N) ſays, that he ought to be diſcharged by Writ. Godb. 105. pl. 123. Mich. 28 & 29 Eliz. C. B. Anon.

3. The Coroner ſhall be diſcharged of his Office by the King's Writ ſent unto him, and thereupon ſhall iſſue another *Writ* directed *unto the Sheriff to chuſe a new Coroner*, and that Writ *ſhall recite the Cauſe of the Diſcharge of the other* Coroner. F. N. B. 163. (G) But this *Cauſe is non traverſable*. Ibid. in the new Notes there cites (b) 5 Rep. 58.

4. If a Coroner is *in a languiſhing Condition, or ſo broken with old Age that he cannot exerciſe the Office, or becomes Paralitick*, it is good Cauſe to remove him. 8 Rep. 41. b. in a Nota of the Reporter. F. N. B. 163. (N) there is a Writ to that Purpoſe. —— 2 Hawk Pl. C. 44. cap. 9. S. 12. S. P.

5. If

5. If a Coroner be *discharged* of his Office *by false Suggestion*, *by the King's Writ directed to the Sheriff*, then *the Party may come into the Chancery, and require a Commission to inquire of the said false Suggestion*, and to return the Inquiry before the King into the Chancery, and if it be found to be False, then the King may make a Supersedeas to the Sheriff, that he do not remove the Coroner if &c. and if he be removed that he suffer him to exercise his Office as he did before. F. N. B. 164. (D)

(K) Punished.

1. 3 *H.* 7. *cap.* 1. A *Coroner shall not be remiss, but shall duly execute his Office according to Law, in Pain of* 5*l. and shall have for his Fee (upon View of the Body)* 13*s.* 4*d. of the Goods of the Murderer, if he have any; if not, then out of such Amerciaments as shall be set upon the Township that suffered the Murderer to escape.*

2. 1 *H.* 8. *cap.* 7. *Justices of Assise and Peace have Power to enquire of and punish the Defaults and Extortions of Coroners.*

3. The Coroner *is to return his Inquisition at the next Gaol Delivery*, and becaus he did not, the *Court discharg'd him, and set a Fine of* 100*l. upon his Head*, they having found it Murder, and kept the Inquisition in his Pocket. Per Cur. in a Nota. Keb. 280. pl. 81. Pasch. 14 Car. 2. B. R. The King v. Ld. Buckhurst & al'.

For more of Coroner in general, See other proper Titles, and 2 Hawk. Pl. C. 42 to 55. cap. 9. and 2 Hale's Hist. of Pl. of the Crown 53 to 69. cap. 8. concerning the Coroner, and his Court and Authority in Pleas of the Crown.

Corporations.

Fol. 512. See (E)

(A) By what *Means* a Corporation may commence, and by what *Words* and *Names*, and by whom, & e contra.

[Or rather, of the several Sorts of Corporations,]
[And of what Person or Persons it consists. Pl. 1, 2.]

1. A **Corporation** consists of one single Person only, as the King, Bishop, * Parson &c. Co. 10. 29. b. A Prebendary. Co. 10. 31. b.

2. Or aggregated of many, as Mayor and Commonalty, Dean and Chapter, and these in the Civil Law are called Universities or Colleges. 10 Co. 29. b.

* A Parson has Succession, and is a Corporation in him and his Successors; for he may † prescribe in him and his Predecessors, and may purchase to him and his Successors. Br. Dean &c. pl. 19.

† S P.

†S. P. Br. Encumbent, pl. 14. cites 39 H. 6. 14. —— And per Danby, a Man may *give Land to a Parſon and his Succeſſors*, 7 E. 4. 12. and the ſame per Littleton in his Chapter of Frankalmoigne. Ibid. —— Br. Corporations. pl. 68. cites 39 H. 6 14 & 7 E. 4. 12.

Of Corporations ſome in *Spiritual*, and ſome are *Temporal*. The Spiritual are, as Abbots, or Priors, and their Covents, and ſuch like, which conſiſt of Perſons Religious, Regular, and Dead as to the World. The Temporal are, as Dean and Chapter, Mayor and Commonalty, Maſters, and Confreres, and ſuch like, of which ſome conſiſt wholly of Perſons Spiritual and Secular, ſome of Perſons Temporal wholly, and ſome Mix'd of Perſons Eccleſiaſtical and Temporal, for which See, Thel. Dig. 19. Lib. 1. cap. 22. S. 2 refers to 5 H. 7. 26. 13 H. 8. 13. and 14 H. 8. 3. —— Co. Litt. 250. a. S. P.

3. **There are** 4 Sorts **of Corporations** by the Common Law, **As the King. Co.** 10. 29. **b.**

4. **By** Authority of Parliament. Jenk. 270. pl. 88. S. P. —— Co. Litt. 250. a. S. P.

5. **By the** King's Charter. Jenk 270. pl 88. S. P. —— Co. Litt. 250. a S. P. —— Some are *by Grant of the King*, who alſo is a Body Politick in himſelf. Thel. Dig. 19. Lib. 1. cap. 22. S. 2. refers to the Reports of Plowden, Fol. 242.

6. **By** Preſcription. Jenk. 270. pl. 88. S P. —— Co. Litt. 250. a. S. P. —— Some Corporations are *by Preſcription*. Thel. Dig. 19. Lib. 1. cap. 22 S. 3 ſays it appears 34 H. 6. 27. and in divers other Books.

7. A *Commonalty* may be a Corporation *without Mayor or Bailiffs*. Thel. Dig. 20. Lib. 1. cap. 22. S. 16. cites Paſch. 2 H. 6. Grants 3, and ſays See Mich. 39 H. 6. 13. where Priſot ſaid, that a Corporation without a Head is not good.

8. The *College of Greyſtock* was *founded by Pope Urban*, at the Requeſt of Ralph Baron of Greyſtock, Anceſtor of the Lord Dacres, and was always afterwards called or known and certified in the Book of Firſt Fruits and Tenths, *by the Name of the College of Greyſtock*, and it *conſiſted of a Maſter and 6 Prieſts, always reſiding at Greyſtock*, who *came in by Admiſſion and Inſtitution of the Biſhop*, and were not eligible, and the Prieſts had yearly Stipends of 5 Marks a Year, beſides their Bed and Chamber, and the Maſter 40 Marks a Year, but they *had no common Seal*, and therefore it was adjudged, that was not a College well incorporated, and therefore not given to King Ed. 6. by the Statute 1 Ed. 6. of Diſſolutions. D. 81. a pl. 64. Hill. 6 Ed. 6. The King v. Ld. Dacres, als. Greyſtock College's Caſe. S. C. cited 4 Rep. 107. as reſolv'd, that this had no lawful Commencement; for the Pope could not found or incorporate a College within this Realm, but it muſt be done by the King himſelf, and by no other. —— Jenk. 205. pl. 35. S. C.

9. The Bp. of St. David's by *Licence from the King to appropriate certain Advowſons, did, by the King's Aſſent, and alſo of the Dean and Chapter, make a Collegiate Church, and conſtituted Prebendaries* thereof, and appropriated a Corps to every Prebendary, all which was afterwards confirmed by the King's Letters Patents. Reſolv'd by all the Juſtices of both Benches, except Harper, that this ſhall be taken as a College, and given to the King by the Statute 1 Ed. 6. D. 267. a. b. pl. 12. Mich. 9 & 10 Eliz.

10. There are 4 *Things* of Subſtance *to be obſerv'd in every Corporation* founded *ad Pios Uſus*. 1ſt. It muſt be known by a Name, as Preſident and Scholars, or Maſter and Scholars, or Rector and Confreres &c. 2dly, There muſt be a *Place* certain where the Perſons ſhall be reſident, which muſt have a *known Name*, As *College*, Nunnery, Hoſpital &c. 3dly, It muſt have the *Name of a Saint*, to whom it is dedicated *or Founder*, as Collegium Petri, or Pauli, or Gonvell-Hall, or Chriſt-Church &c. 4thly, It muſt have a *Place known in which the Houſe ſhall ſtand* known by ſome Name before the Foundation, as *in Oxford*,

in Cambridge, in London &c. Per Manwood Ch. B. Mo. 231. Hill. 29 Eliz. in Fanſhaw's Caſe.

12. In the Name of a Corporation 4 *Things only are to be reſpected.* 1ſt, *the Names of the living Perſons*, who are the Corporation, *as Maſter and Chaplains* &c. 2dly, *The Houſe in which they are reſident*, and make their Abode. 3dly, The *The Name of the Founder.* 4thly, The *Place whereupon the Houſe of their Abode is built* and erected. And if theſe 4 Matters are ſufficiently ſet down, though not formally, it is good enough; by the Lord Ch. B. in his Argument in the Court of Exchequer. Le. 160. pl. 228. Mich. 30 & 31 Eliz. in Caſe of Marriot v. Paſchall.

12. It was ſaid to be adjudg'd that the Inhabitants of a Town *cannot be incorporated without Conſent of the Major Part* of them, and that without their Conſent the Incorporation is void. 2 Brownl. 100. Trin. 9 Jac. Anon.

13. It may be *with a Head or without* a Head, and the *Head and Members may be appointed after the Foundation*; and the *Foundation may be before any material Fabrick is erected.* Jenk. 270. pl. 88. Caſe of Sutton's Hoſpital, Mich. 10 Jac.

14. *Franchiſes* &c. are *not eſſential* to a Corporation but a Privilege pertaining to it; the Eſſence of a Corporation is to make By-Laws, and govern their Members &c. the which they may do, though their Franchiſes are ſeiſed; As the Dean and Chapter of Norwich was a Chapter to the Biſhop, and therefore remains a Corporation after their Lands ſurrendred; otherwiſe of a Corporation for a particular Purpoſe, as an Hoſpital, which by Surrender of their Land had been deſtroyed before they were reſtrained by 13 Eliz. Per Holt Ch. J. and for this he cited Fitzherbert Corporation, cited in the Biſhop of Norwich's Caſe. Skin. 311. Hill. 3. W. & M. in B. R. in Caſe of the King v. the City of London.

(A. 2) Corporation. What it is.

A Corporation *is* an artificial Body, compoſed of divers conſtituent Members,

1. A Corporation *is* a Body Politick, conſiſting of material Bodies, which, join'd together, muſt have a Name to do Things that concern their Corporations, or otherwiſe it is no Corporation. And. 206. pl. 238. Hill. 29 Eliz. per Ch. B. in Caſe of Marriot v. Maſcall.

Ad inſtar Corporis Humani, and the Ligaments of this Body Politick or artificial Body, are the Franchiſes and Liberties thereof, which bind and unite all its Members together together; and the whole Eſſence and Frame of the Corporation conſiſt therein; Per Pemberton Serjeant. Arg. Carth. 217. Hill. 3 W. & M. in Sir James Smith's Caſe.

2. All the *natural Perſons of the Corporation* are not the Corporation but are Perſons of which the Corporation conſiſts, but not wholly; for the Name is a Part alſo without which the Corporation cannot be. Arg. per Juſticiarios. And. 210. Hill. 29 Eliz. in Caſe of Marriot v. Maſcall.

3. The *Mayor and Aldermen of London* are not a Corporation, but *a Court*; Reſolv'd. Carth. 172. Hill. 2 & 3 W. & M. in B. R. Rich v. Pilkington.

4. A Corporation *is* properly an inveſting the People of the Place with the Local Government thereof, and therefore their Law ſhall bind a Stranger,

Stranger, and can only be *created by* the Crown; but a Corporation may make a *Fraternity*; Per Cur. 1 Salk. 193. pl. 5. Hill. 2 Ann. B. R. in Caſe of Cuddon v. Eaſtwick.

5. The *Ancients and Principals of Furnival's Inn* brought an Action upon a Bond given to diſcharge the Duties of the Houſe, but being try'd before Holt Ch. J. the Plaintiffs were nonſuited, becauſe *not being a Body Politick*, they were not capable *to ſue*. Cited Arg. Gibb. 296. Trin. 5 Geo. 2. C. B.

(B) *Who may make* a Corporation.

1. NONE but the King can make a Corporation. Co. 10. 33. b. 49 E. 3. 4. * 49 Aſſ. 8.

* Br. Deviſe, pl. 21. cites S. C.

per Perſey, Caundiſh, Belknap, and Knivet. —— Jenk. 205. pl. 35. S. P. cites D. 267. and 10 Rep. 1. Sutton Hoſpital's Caſe. —— Jenk. 270 pl. 88. S. C. —— 4 Rep. 107. b. cites Greyſtock College's Caſe S. P. —— Jenk 205. pl. 35. S. C.

2. The King may give Power to a common Perſon to name the Perſons, and the Name of the Corporation, and when he hath done ſo, this Corporation is not ſaid to be made by the common Perſon, but by the King. Co. 10. 33. b.

Jenk. 270. pl. 88. S. P.

3. If the Mayor and Commonalty of London preſcribe to make another Corporation in the City, and their Cuſtoms are confirmed, yet it is not good without the King's Charter. * 49 E. 3. 4. † 49 Aſſ. 8.

* Br Corporations, pl. 15 cites S. C. —— Ibid. Preſcription, pl. 12 cites S C —— *Scire Facias*; R. F. of London was *ſeiſed of certain Land in London Deviſable*, and *deviſed to his Feme for Life, to find a Chaplain*, the *Remainder to two of the beſt of the Art of Whittawers of London, to find a Chaplain for ever, and, died, and the Feme found a Chaplain for Life and died, the two Wardens of Whittawers enter'd, and did not find for the Chaplains*, by which it was found by Office, and that the *Deviſor died without Heir*, whereupon Scire Facias iſſu'd againſt them, to ſay why the King ſhou'd not have the Land by Eſcheat for the Non Capacity of the Reverſion, and they came and *alleg'd Preſcription, that by the Uſage of London People of every Art may make Commonalty, Guild, and Fraternity, and deviſe to them*, and that the Kings have confirm'd their Uſage. And by Award *none* can make Commonalty nor Corporation *but the King himſelf*, quod nota; and yet it is uſual that Corporations may preſcribe that they have been a Body Politick Time out of Mind, and have been capable, and pleadable, and impleadable Time out of Mind, but one Corporation cannot make another Corporation. And per Caund. ſuch Corporations which London makes are not perpetual, but commerce by the Aſſent of the People of an Art at their Wills, ſo that if any of the Art will leave it, they may at their Pleaſure, quod non negatur; And per Belk they cannot make Statute of Inheritance, nor make Land departable, nor to be deviſeable, nor the King by his Charter cannot do it, quod Caund. conceſſit, and that the King may give to the Queen, and ſhe may have Action alone. Br. Preſcription, pl. 12. cites 49 E. 3. 3.

† Br. Deviſe pl. 21. cites S. C. that a Man *cannot preſcribe to make* Guilds or Fraternity *without Charter from the King*; For Commonalty cannot make Commonalty. —— Br. Corporations, pl 45. cites S. C. that *Commonalty or Corporation cannot make another* Corporation or Commonalty, by Uſage nor Preſcription, nor otherwiſe unleſs by Charter of the King, which wills it by expreſs Words; Per Judicium Curiæ. —— Mo. 584 Arg. cites S. C. —— Sid 291. pl. 7. Trin. 18 Car. 2. B. R. in the Caſe of The King v. Beardwell is a Nota, that in that Caſe it was ſaid that there cannot be a Corporation out of a Corporation where the firſt was *by Grant*; And it was doubted whether there can be a Corporation out of a Corporation where the firſt was *by Preſcription*. For in London ſeveral of the Companies are Corporations by Preſcription, out of the Grand Corporation by Preſcription viz both by Preſcription.

4. Note, that a Corporation or Commonalty *can't make another Corporation* nor Commonalty *unleſs by Grant of the King by expreſs Words*; and not by Preſcription or Cuſtom; And per Cand. the King may by his Charter *divide a Corporation*, and make the Prior of Weſtminſter

minſter to ſue the Abbot for his Poſſeſſions. Br. Grants pl. 81. cites 49 Aſſ 8.

The King only can grant or give Licence to found a Spiritual Corporation. 5 Rep. 26. a. Hill. 33 Eliz. in Cawdry's Caſe, cites 9 H. 6. 16 [b. pl. 8]—— Only the King can make a Corporation, Jenk. 270. pl. 88. cites 10 Rep. 1. Sutton Hoſpital's Caſe.——Ibid. 205. in pl. 35. cites S. C. & S. P.

5. The *King cannot give Licence* to another *to make a Corporation*; for a Corporation ought to be made by the Words of the King himſelf. Thel Dig. 20. Lib. 1. cap. 22. S. 26. cites Hill. 2 H. 7. 13. per Keble, contra per Rede J. Mich. 20 H. 7. 7. & 38 E. 3. 14. And it was ſaid by Brian and Choke, that the King *may give Licence to one to make a Chantery* for a Prieſt in a certain Place, *and to give Land to him and Succeſſors* &c. And that this ſhall be a good Corporation without more Words. Thel. Dig. 20. Lib. 1. cap. 22. S. 26. cites Trin. 22 E. 4. Grant 30. and that ſo agrees 3 H. 7. Grant 36 & 38 E. 3. 14.

6. A *Man at Common Law Law could not* erect a Spiritual Body Politick, to continue in Succeſſion, and capable of Endowment, *without the King's Licence*, but by the Statute of Martmaines they might have endow'd this Spiritual Body once incorporated Perpetuis Futuris Temporibus without any Licence from the King, or any other. 3 Inſt. 202. cap. 97.

* See Tit. Mortmain (A. 2)

But now any Man may erect and build an Houſe for an Hoſpital, School, Working-Houſe, or Houſe of Correction, and the like, without any Licence, but that is but a Preparation, and may be done as Owner of the Soil; but by the Common Law he could not incorporate any of them without Licence, but now he may *endow them with Lands in certain Caſes, by the Statutes of the 39 Eliz. cap. 5. and 3 Car. cap. 1. 3. Inſt. 202. cap. 97.

(C) *Of what Perſons* a Corporation may be made.

S. P. and both ſhall ſtand. Jenk. 270. pl. 88. —— Several Corporations may be created one out of another; As the Dean and Chapter of Lincoln are a joint Corporation, viz. the Dean is a Corporation by himſelf, and every one of the Prebendaries is a Corporation by himſelf. 10 Rep. 31. b. ad finem, cites 9 E. 3. 18. b.

1. **One Corporation may be made** out of another Corporation. **Co.** 10. **Bridewel,** [cited in the Caſe of Sutton's Hoſpital] 31. b.

(D) Of what *Place*.

Jenk. 270. pl. 88. it muſt have a Place certain; but a fictitious Place will ſerve. —— Mo. 231. per Manwood Ch. B. the S. P. —— Le. 160. pl. 228. S. P. by the Ch. B.

1. **There ought to be a Place** of Corporation. **Co.** 10. 29. b. 123.

2. **There ought to be a Place** ſuppoſed in England, **and if there be not any ſuch Place in England, yet it is good, As of Jeruſalem in England. Co.** 10. 32. b.

3. A Corporation *cannot be limited to a County*, as Probos Homines of such a County, or Trinity College in such a County, but it ought to be restrained to some certain Place; Arg. 2 Brownl. 244. cites it as the Opinion of the Lord Popham in Button's Case. Poph. 57. Mich. 36 & 37 Eliz. B. R. in Case of **Button v. Wrightman**, Popham said, that to erect an Hospital by the Name of an Hospital in the County of S. or in the Bishoprick of B. &c, is not good, because he is bound to a Place too large and uncertain; but a College erected *in Academia Cantabrig' or Oxon'* is good, (and some are so founded) because it *tends to a particular Place*, as a City, Town &c.

(E) Of what *Name*.

1. THERE ought to be a Name **by which it ought to be incorporated.** Co. 10. 29. b. Jenk. 270. pl. 88. it ought to have a Name certain; but a *fictitious Name* will serve. —— Le. 163. pl. 228. Mich. 30 & 31 Eliz. in Cam. Scacc. per Egerton Solicitor General, Arg. says it is a clear and plain Rule in our Law, that the Name of a Corporation *is as a Name of Baptism* to a natural Man, and if there be any Difference, I conceive, that the *Law requires more strict Certainty in the Name of a Corporation, than in the Name of any particular Person*; for a Name is more necessary to a Corporation than to another; for when an Infant is born, he is presently a perfect Creature before any Name given him, and the giving the Name is not a Matter of Necessity, but of Policy, for Distinction &c. but in the Case of a Corporation, *the Name is the Substance and Essence of it*, and it is not a Body before a Name be imposed upon it, and therefore in the Charters of Corporations there is always such a Clause, Per tale Nomen implacitare & implacitari, acquirere &c. possint, and without their Name they are but a Trunk; but contrary in the Case of particular Persons. But otherwise in the Case of a Corporation, and we cannot give any thing to a Corporation by Circumstances inducing or implying their true Name; As Land given to the first Hospital which the Queen shall found, although that it sufficiently appear, that such a one was the Hospital which the Queen first founded, yet the Gift is void. ——— Popham compares the Name of a Place of a Corporation to the Surname of a Person, which regularly ought to be expressed in Leases, but if it be not put with all Exactness, yet it avoids not the Lease; but however that be, it is certain the Mistake of the very Name of the Place, which does not misname the Situation, is not material, for then it keeps within the general Rule formerly given. Gilb. Hist. of C. B. 184. —— Poph. 57. in Case of Button v. Wrightman, S. P.

2. **The Name of the Corporation** is as the Name of Baptism. Co. 10. 28. b. 123. 21 E. 4. 56. b.

3. **The King may incorporate a Town** by one Name, and after by another **Name,** (*) **and then they shall use their Name according to the second Corporation, and yet they shall** continue the Possessions they had before by the other Name. 21 E. 4. 59. * Fol. 513.

4. A Corporation *may be by one Name, and enabled to purchase, and sue by another* Name; Per Cur. Jo. 262. cites 11 E. 1. where a Corporation was by the Name of Master, Wardens, Brothers and Sisters of Rouncevil, and the Patent said, that they should sue by Name of the Master and Wardens of Rouncevil. A Corporation by Tre- by Ch. J. and Powell J. *if by Prescription, may have several Names*; *but* if *by Charter it is otherwise*, for in such Case it cannot have several Names at the same Time, and to the same Purpose; for if a new Charter is granted, and by a new Name, the old one is gone; As in the Case of Baptism by one Name, and Confirmation by another, but such Corporation *may have several Names to several Purposes*, for it may be created *Per Nomen D. to take and to grant*, and *per Nomen F. to sue and to be sued.* 3 Salk. 102. pl. 2. Mich. 10 W. 3. C. B. Anon. —— Non sequitur that what will amount to a *Descriptio Personæ* to enable to take, will be sufficient for a Person to sue in; Per Eyre and Powis J. 10 Mod. 208. in Case of Cambridge University v. Vavasor, Crofts, and A. Bp. of York.

5. Body Politick *cannot be contained in this Word (Perſons)* per Opinionem, in the Reports of Plowden, fol. 177. Thel. Dig. 21. Lib. 1. cap. 22. S. 29.

10 Rep. 1. &c. S. C.

6. A Corporation may be *nam'd by a Subject.* Jenk. 270. pl. 88. cites the Caſe of Sutton's Hoſpital. Mich. 10 Jac.

Ld. Raym. 681. S. C. & S. P. Arg.

7. Where, my Lord Coke ſays, a Corporation muſt have a Name, it muſt be underſtood either as *expreſſed* in the Patent, *or implied* in the Nature of the Thing; As if the King incorporate the Inhabitants of Dale, and give them Power to chuſe a Mayor, tho' there is no Name of Incorporation in the Patent, yet it would be a good Incorporation, and the Name would be Mayor, &c. Commonalty; Per Holt Ch. J. 3 Salk. 102. Trin. 13 W. 3. B. R. in Caſe of College of Phyſicians v. Salmon.

8. *Inhabitants of S.* can neither take by Purchaſe or Deviſe. MS. Tab. December 1, 1722. Foley v. Attorney General.

Le. 163. in pl. 228. Arg. S. P. —— New Abr. 501. S. P. in totidem Verbis.

9. The Names of Corporations *are given of Neceſſity*, for the Name is as the *very Being of the* Conſtitution, and tho' it is the Will of the King that erects them, yet the Name is the Knot of their Combination, without which they could not perform their Corporate Acts, and it is no Body to plead and be impleaded, to take and give, till it hath got a Name, but natural Perſons can take before they come into Being, and when they are in Being, before they have got a Name. As a Remainder may be limited to the eldeſt Son of J. S. but if a Remainder be limited to ſuch a Corporation as the King ſhall next erect, this is not good, tho' a Corporation be erected before the particular Eſtate be determined, for this Body of Men are only capable of taking by the Name in the Patent. G. Hiſt. C. B. 181, 182, cap. 17.

And here they Note, that if their

10. Theſe *Names of Corporations* are uſually *taken* from 5 Things, 1ſt. *From the Perſons, of which they conſiſt.*

Names be expreſſed by Words Synonimous, it is ſufficient; As if a College be inſtituted by the Name of *Guardianus, & Scholares Domus ſive Collegii Scholarium de Merton* and they *make a Leaſe by the Name of Cuſtos & Scholares* it is good, *So* if the Grant be made *by Præpoſitus & Socii* where it ſhould be Scholares, it is good.

So if J. S. *Abbot of B.* makes a Leaſe *by the Name of Clericus de B.* it is well enough.

If there be a Corporation founded by the Name of *Mayor & Burgenſes Burgi Dom' Regis*, an Obligation is made to them by the Name of *Mayor & Burgenſes de Linn Regis* &c. without ſaying Burgi Dom' Regis, and this was allowed a good Obligation; for *the Parties are ſufficiently expreſſed*, and all Burroughs are founded by the King Guardianus for Guardian is well enough, but they are an aggregate Body. Gilb. Hiſt. of C. B. 182, 183. —— New Abr. 501. S. P. in totidem Verbis.

If an Houſe be founded by the Name

11. 2dly, Their Name is taken *from the End and Deſign of their Being.*

of *Miniſter Pauperis Domus Dei*, this is well enough, for the main Deſign is ſpecified by both Names But if an Houſe be founded by the Name of *Guardiani & Scholarium Domus ſive Collegii Scholarium de Merton*, and a *Leaſe* be made by them *by the Name of Guardianus & Scholares Domus ſive Collegii de Merton*, this is no good Leaſe, for it is a material Variance of the Name, ſince they have *not expreſſed the Deſign of the Houſe*, which is a ſubſtantial Part of the Name. But if a College be inſtituted by the Name of *Aulæ Scholarium Reginæ, to be governed by a Provoſt*, and they are *confirmed* by the King *by the Name of Præpoſitus & Scholares Aulæ Reginæ*, and they make a Grant of that Advowſon by that Name, this is good, for that College would never have a Name according to the Words of the firſt Charter, for then it would be a Sole Corporation, which is contrary to the general Convenience of ſuch a Body, for the Name would be Præpoſitus Scholarium Aulæ Reginæ, which cannot be intended, and the Word Scholares is not required as in the former Caſe, and the placing where it is, confirms the Eſtabliſhment, and Confirmation of the King, and common Appellation are good Interpreters of the original Intent of the Name. Gilb. Hiſt. of C. B. 183, 184. ——New Abr. 502, 503. S. P. in totidem Verbis.

E. 4 incorporated the Deans and

12. 3dly, The Names of Corporations are taken *from the Names of the Patrons* that procured the Juriſdiction, or that have endowed them.

Canons of Windſor by the Name of the *King's Free Chapel of St George the Martyr*, and in the time of W. & M. they made a *Leaſe by the Name of the Dean and Canons of the King's and Queen's Free Chapel*

ple &c. this is a material Miſtake of the Name, for it takes its Name from the Founder, that is here miſtaken, and the Name of a different one ſubſtituted in its room. Gilb. Hiſt. of C. B. 184.—— New Abr. 501. 503. S. P. in totidem Verbis.

13. 4thly, Their Names are taken *from the Places, where they reſide.* For the Corporation has a fixed Place

where it is ſettled, and from whence it cannot be removed, but to natural Perſons the Name of the Place is but an Addition, for they may remove and change Place, and ſo their Names would have perpetual Alterations. Gilb. Hiſt. of C. B. 184. —— New Abr. 184. S. P. in totidem Verbis.

14. 5thly, The * Name *of the Saint*; and if this be omitted or miſtaken, this doth not avoid their Grants or Leaſes; for the Name of Dedication is but an empty Sound, and expreſſes no real Uſe or Deſign, and therefore is immaterial, and may be omitted. If the Prior of St. Michael of Coventry makes a Leaſe by the Name of

Our Dean of Coventry, this is good; ſo if they granted an Annuity or Corody, and the Name of the Saint had been omitted. Gilb. Hiſt. of C. B. 186. * See New Abr. 501.

(F) By what *Words*.

1. THESE Words, Incorporo, Fundo, Erigo &c. are not of Neceſſity to be uſed in making a Corporation, but Words equivalent are ſufficient. Co. 10. 30. Jenk. 270. pl. 88. S. P. —— 10 Rep. 30. a in the Caſe

of Sutton's Hoſpital, and ſays, that with this accords 44 Aſſ. 9. in the Prior of Plimpton's Caſe, and 4 E. 4. 7 in the Abbot of Glaſtonbury's Caſe and that in none of thoſe Books or Records was any mention made of thoſe Words, Fundo, Erigo &c. or any the like Words; For, as has been ſaid, they are Words declaratory only, and the Effect of them may be made by the Owner of the Land without any Grant.

2. Of ancient Time the Inhabitants of a Town were incorporated when the King granted to them to have Guildam Mercatoriam. Reg. 219. Co. 10. 30. 10 Rep. 30. a. in the Caſe of Sutton's Hoſpital,

cites the Regiſter 219. b. and ſays that thereupon the Place of all their Convocations and Aſſemblies were called the Guildhall, and Ibid. 30. b. cites other Books, that the Words Gilda Mercatoria made an Incorporation.

3. The King gave Licence to Ramſey to grant a Rent cuidam Capellano; this made a Corporation. 2 H. 7. R. 155. * 2 H. 7. 13. Co. 10. 28. [27. b.] *Br. Patents, pl. 44. cites S. C. —— Fitzh. Grant, pl. 36. cites S. C.

4. If the King grants Lands to the Men or Inhabitants of D. Hæredibus & ſucceſſoribus ſuis, rendering a Rent for any Thing touching theſe Lands, this is a Corporation, but not to other Purpoſes. * 21 Ed. 4. 56. 7 E. 4. 30. † 2 H. 7. 13. * Br. Corporations pl. 65. cites S. C. † Br. Patents, pl.

44. cites S. C.———Fitzh. Grant. pl. 36. cites S. C.——Br. Corporations, pl. 54. cites 7 E. 4. 14. S. P.———S. P. and it ſeems, that they are only Tenants at Will; And if the Queen will releaſe or give to them the ſaid Rent and Fee-Farm, it ſeems that the Corporation is diſſolved ipſo facto; For the Rent and Fee-Farm was the Cauſe of enabling the Corporation &c. Ideo Quære. D. 100. a. pl. 70. Trin. 1 Mar. Anon.

5. But

Br. Corporations, pl. 65. cites S. C.

5. But **if the King grants Land** Hominibus, **or Inhabitantibus de D. if they be** not incorporated before, **the Grant is void,** if no Rent **be** reserved **to the King.** 21 E. 4. 56.

Br. Corporations, pl 65. cites S. C.

6. But **if the King grants** Hominibus de **Iſlington** to be diſcharged of Toll, **this is a good Corporation to this Intent, but not to Purchaſe.** 21 E. 4. 59. **(R. this is Matter of Diſcharge.)**

But if he gives the Lands in Fee-Farm either Probis Hominibus de J. or Burgenſibus, Civibus, & Communitati; this makes a good Corporation. Br. Corporations, pl. 54. cites 7 E. 4. 14.———Thel. Dig. 20. Lib. 1. cap 22. S. 17. cites S. C. and 21 E. 4. 56. that they are incorporated to have any Action for any Matter touching this Land, but not otherwiſe.

7. **If the King gives** Lands to the Inhabitants of Iſlington, and their Succeſſors, **If they were** not incorporated before, **this is a void Grant, for the King is deceived.** 7 E. 4. 30.

8. Aſcue ſaid, that the *College of Rippon* in his Country was founded *by the Name of Canonici* only. Thel. Dig. 20 Lib. 1. cap. 22. S. 16. cites Trin. 18 H. 6. 16.

9. Corporation is good *without limiting any Number certain of Perſons* to be of the Corporation. Thel. Dig. 20 Lib. 1. cap. 22. S. 25. cites Hill. 34 H. 6. 27.

10. The King *incorporated* thoſe of Norwich *by Name de Civibus & Communitate*, and after in the *Charter*, *Conceſſimus Civibus* prædictis *quod non ponantur in Juratis* &c. *omitting this Word Communitate*, and per Brian Ch. J. and Neal and Choke Juſtices, the *Grant* is good to the *Citizens only*, becauſe it *makes a new Corporation*. Br. Corporations, pl. 65. cites 21 E. 4. 55, 56.

11. *And* if the King grants to the *Inhabitants of the Vill of Dale, that they may chuſe a Mayor, and after* this, that they *ſhall implead, and ſhall be impleaded by the Name of Mayor and Commonalty of Dale*, now this Word Inhabitants is gone, and yet it was good in Principio to take the Grant. Br. Corporations, pl. 65. cites 21 E. 4. 55, 56.

12. *And* Note, that in all the Ancient Cities and Boroughs of England, as in London and elſewhere, the Grant is made to the *Citizens of* London or *Burgeſſes of* Dale, and the like, *which were never incorporated before, and yet good*; but it ſeems that thoſe are *Favours for their long Continuances*, and there are many Grants to them by Names as above, and that they may make a Manor, and to have Conuſance of Pleas, and many other Articles, is well, for they enjoy them. Br. Corporations, pl. 65. cites 21 E. 4. 55, 56.

13. If the *King* ſhould *grant Lands probis hominibus Villæ de Iſlington without ſaying habendum to them and their Heirs, or Succeſſors, rendring Rent*, this is a good Corporation perpetual as that Intent only, but then it ſeems that they are but Tenants at Will, and if the King releaſes, or gives to them the ſaid Rent, the Corporation it ſeems, is diſſolved ipſo facto; For the Rent was the Cauſe of the enabling the Corporation, &c. Dyer 100. a. pl. 70. Trin. 1 Mar. ſays it was ſo held for Law in the Star-Chamber. The Book ſays, Ideo Quære.

14. King Edward 6. *granted* to the Mayor, Citizens, and Commonalty of London, *his Manſion-Houſe, call'd Bridewell, and that it ſhould be founded and erected into an Hoſpital for the Poor, and that when founded and erected, it ſhould be call'd the Hoſpital of King Edward* 6. *of Chriſt Bridewell, and St. Thomas the Apoſtle, and that they ſhould be incorporated by the Name of the Governors of the Poſſeſſions, the Revenues and Goods of the Hoſpital of King Edward* 6. &c. Adjudged, that this Hoſpital in Intention only was ſufficient to ſupport the Name of a Corporation, and that the Words, (viz) that the Governors from henceforth ſhould be incorporated by the Name &c. incorporated them immediately,

ately, and that they ſhould not wait till a Hoſpital be actually built. 10 Rep. 31. a. b. cites Mich. 34 & 35 Eliz. Rot. 172. B. R. Bridewell Hoſpital's Caſe.

15. King. J. by his Letter-Patents granted that the Borough of Yarmouth ſhould be incorporated, and the Grant is made *Burgenſibus, without naming of their Succeſſors*, and alſo he granted Burgenſibus *tenere placita coram* Ballivis, and in *pleading* it was *not averred that there were Bailiffs there*, and it was objected that the Borough cannot be incorporated, but by Men which inhabit in it; but it was reſolv'd, that the Grant, is good, and the Lord Coke ſaid, that he had ſeen many old Grants *to the Citizens of ſuch a Town*, and good, and ſo that the Grant Burgenſibus, that the Borough ſhould be incorporated, being an *old Grant, ſhould have favourable Conſtruction*; but the Doubt was, for that, that it was not averred that there were Bailiffs of Yarmouth, and if a Grant to hold Pleas, and doth not ſay before whom, the Grant is void, according to 44 E. 3. 2 H. 7. 21. Ed. 4. And for that it was adjudg'd; but the Opinion of all the Court was, that the Grant made Burgenſibus was good without naming of their Succeſſors, as in the Caſe of Grant Civibus, without more. 2 Brownl. 292. Hill. 7 Jac. 1609. C. B. Yarmouth Borough's Caſe.

16. A Charter by the King *to Aliens* may make them a Corporation as to the King, but not a Corporation as to the Subjects. See Roll Rep. 148. Hill. 12 Jac. B. R in the Caſe of the King v. Hanger.

17. The *Lockſmiths of Durham made Orders* for taking away Locks ill made, ſuppoſing themſelves to be a Corporation, becauſe *the Biſhop of Durham having Jura Regalia had confirm'd their Orders*; But Roll Ch. J. thought it would be hard to maintain that this made them a Corporation. Sty. 298. Mich. 1651. Goodyer v. Shaw.

(G) *What* Thing ſhall be *incident* to a Corporation *without ſpecial Grant or Preſcription.*

1. **When a Corporation is duly created,** all other Incidents are tacitly annexed. **Co. 10. 30. b. P. 11 Ja. B. R. *St. Savior's Caſe* reſolved.**

2. As **if the King makes** a general Corporation by a certain Name without any Words of Licence to purchaſe Lands, or implead, or be impleaded, **yet the Corporation may purchaſe, plead, or be impleaded well enough; for that by the making of the Corporation all thoſe neceſſary Incidents are included. P. 11 Jac. Scaccario, *St. Savior's Caſe*, reſolved per Curiam. Co. 10. 30. b. Hobart's Reports 285.** 10 Rep. 30. b. S. P. per Cur. cites 22 E. 4 Tit. Grants 30. where it is held by Brian Ch. J. and Choke accordingly, and where in that Caſe it was ſaid 1ſt. By the ſame to have Authority, Ability, and Capacity to purchaſe, but adds not any Clauſe to enable them to alien &c. yet that is incident, and need not be added. 2dly, To ſue and to be ſued, implead and be impleaded. 3dly, To have a Seal &c. This is alſo Declaratory, and not Neceſſary; for when they are incorporated they make or uſe what Seal they pleaſe. 4thly, It reſtrains them from aliening or demiſing, unleſs in a certain Form; This is an Ordinance, teſtifying the Deſire of the King, but is only a Precept, and does not bind in Law. 5thly, That the Survivors ſhall be the Corporation; This is a good Clauſe to remove Doubts and Queſtions which may ariſe, the Number being certain. 10 Rep. 30. b. in the Caſe of Sutton's Hoſpital

Hob. 211. pl. 268. in Caſe of Norris v. Staps, Hobart Ch. J. ſays, that though Power to make By-Laws is given by ſpecial Clauſe in all Corporations, yet it is Needleſs; For I hold it to be included by Law, in the very Act of Incorporating, as is alſo the Power to ſue, purchaſe, and the like; For as Reaſon is given to the natural Body for the governing of it, ſo the Body Corporate muſt have Laws

as a Politick Reaſon to govern it, but thoſe Laws muſt ever be ſubject to the general Law of the Realm, as ſubordinate to it; And if the King in his Letters Patents of Incorporation do make Ordinances himſelf, yet they are alſo ſubject to the ſame Rule of Law.——5 Mod. 439. S. C. cited by Holt Ch. J.

Lane 21. Paſch. 4 Jac. in Scacc. S. C. and S. P. but Tanfield Ch. B ſaid, that he held that this

3. But by ſpecial Words **the King** may make a **limited Corporation, or a** Corporation for a ſpecial Purpoſe; As **if the King grants** probis Hominibus de Iſlington, & Succeſſoribus ſuis, rendring a Rent, **this is a Corporation to render the Rent to the King, and not otherwiſe. P. 11 Ja. Scaccario,** *St. Savior's Caſe*, **per Curiam reſolved.**

Leaſe ſhould not make a Corporation where the King conceiv'd that there was no Corporation before, but that the King ſhould rather be ſaid to be deceived; For he took a Difference where there is a reputed Corporation in being and where there is not, and thereupon in the principal Caſe the Barons directed the Jury to give a general Verdict.

They may make Ordinances agreeable to the Law. Jenk. 270. pl. 88. —— See the Notes at pl. 3. Supra.

4. **If the King** creates a Corporation, and does not give any expreſs Power **in the Letters Patents** to make Laws, **yet this Power is incident to the Corporation, and included in their Incorporation;** but **theſe Laws ought always to be ſubject to the Laws of the Realm, as ſubordinate thereto; for a Body Politick cannot be governed without Laws. Hobart's Reports 285.**

S. C. cited Arg. Show. Parl. Caſes 45.—S. C. cited 8 Mod. 127. Arg.

* Fol. 514.

5. **If the King** creates a Corporation of a Mayor, and 8 Aldermen, with a Clauſe in the Patent, Quod ſuper Mortem vel Remotionem alicujus Aldermanni liceat Majori, & cæteris Aldermannis infra octo Dies Proximo poſt Mortem vel Remotionem &c. to elect another **Alderman into his Place &c. though no Election be within** 8 Days **after the Death of** (*) **an Alderman,** yet they may elect an Alderman at any Time after; **for they have Power to elect another,** as **incident to the Corporation created; for Ancient Corporations have no ſuch Clauſe, giving Power to elect, and this** Affirmative Power does not take away the implicative Power **incident to the Corporation. P. 8 Car. B. R. in the Caſe between** *Hicks* **and the Town of** *Lanceſton* **in** *Cornwal*, **reſolved per Curiam, ſcilicet, Richardſon and Croke, no other of the Judges being there, and a Writ granted accordingly to elect another Alderman.**

6. [So] **If a Corporation be created of a Mayor and** 8 **Aldermen, with a Clauſe in the Patent, that if any of the Aldermen die, or be removed, and it ſhall be lawful for the Mayor and the reſt of the Aldermen, within** 8 **Days after the Death or Removal, to elect another in his Place,** though it is not limited, that they, or the greater Number of them, may elect, **yet the greater Number may elect, P. 8 Car. B. R. between** *Hicks* **and the Borough of** *Lanceſton*, **admitted per Curiam.**

7. And **in the ſaid Caſe,** if the Mayor, at **the Time of the** Death of an Alderman, be abſent **from London** till after the 8 Days, and the Aldermen, within the 8 Days, come to the Deputy, and require him to make an Aſſembly of them to elect another within the 8 Days, and he refuſes, and thereupon the greater Part **of the Aldermen** aſſemble themſelves without the Mayor or his Deputy, and elect **an Alderman, this is a void Election, for the Mayor ought to be preſent at it by the Words of the Grant. P. 8 Car. B. R. between** *Hicks* **and the Borough of** *Lanceſton*, **per Curiam.**

A Corporation which has a Fee-ſimple in

8. When a Corporation is made, eo ipſo without any Words, they are enabled *to have a Common Seal; and to implead and be impleaded, to make Leaſes and Grants, to purchaſe* for Years, Lives, or in Fee; but

for

for Purchaſes in Fee they ought to have a Diſpenſation of the Statute of Mortmain from the King, and the Lords mediate, if the Land be holden from them. They have Power *to make Ordinances* according to the Law. Jenk. 270. pl. 88.

Lands, *cannot be reſtrained from making Leaſes for 21 Years or more, or 3 Lives, or in Fee,* unleſs by Act of Parliament; for it is againſt the Nature of an Eſtate of Fee-ſimple to be reſtrained. Jenk. 270. pl. 88.

9. If there be a *Popular Election* of Mayor, and Mayor and Alderman in Corporation Towns, and this happens to *breed a Confuſion* amongſt them, this may be altered by their Agreement, and by the Common Conſent of all, to have their Elections made by a fewer Number, but not otherwiſe; but if by their Charter they are to be elected by them all, then this is not *altered* but by, and with, the general Aſſent of the whole Town, and ſo by this Means to take away Confuſion; per tot Cur. 3 Bulſt. 71. Trin. 3 Jac. The Corporation of Colcheſter v. &c.

10. Every Corporation, as ſuch, have Power to take a Burgeſs's *Reſignation*; Per Hale Ch. B. Sid. 14. pl. 4. Mich. 12 Car. 2. B. R. The King v. Tidderley.

11. A new Charter doth not merge or *extinguiſh* any *ancient Privileges*, but the Corporation may uſe them as before. Raym. 439. Paſch. 33 Car. 2. B. R. Haddock's Caſe.

Vent. 355. S. C. and S. P. per Cur.

12. Whether a *Power of Diſfranchiſement* be a Power incident to every Corporation? Or whether it muſt be given by expreſs Words in the Charter? See Arg. 10 Mod. 175. Trin. 12 Ann. B. R. in Caſe of the Queen v. Corporation of Buckingham.

(G. 2) What a Corporation may do, and what muſt be under the Corporation Seal.

1. IF the *Mayor and Commonalty* be *diſſeiſed, and* after *every one of the Commonalty releaſe by their proper Names*, this is not good, but the Mayor and Commonalty ought to releaſe by their Common Seal. Br. Corporations, pl. 27. cites 19 H. 6. 64.

2. In Feoffment to the *Dean and Chapter* they *cannot take but by Letter of Attorney under Seal*; Per Brook Juſtice. Br. Corporations, pl. 34. cites 14 H. 8. 2. 29.

3. *Abbot and Covent cannot leaſe but by Deed, but the Abbot alone may* leaſe without Deed, and if the Predeceſſor receives the Rent, the Leaſe is affirm'd good. Br. Leaſes, pl. 32. cites 5 E. 4. 43. and ſays it is ſo ſaid there.

4. *Bond* made *by the Mayor and Commonalty to the Mayor* is not good, for he is the Head of the Corporation. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

5. *So* it is *in Quare Impedit*, the *Maſter and Confreres cannot preſent the Maſter*, Contra of one of the Confreres. Br. Corporation, pl. 63. cites 14 H. 8. 2.

6. *Warrant of Attorney* of a Corporation ſhall be by their Common Seal, and otherwiſe it is Void; Per Choke Juſtice. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

In a *Quo Warranto* againſt the Mayor and Citizens of Cheſter, there was a *Warrant of Attorney* under the Seal of the Mayor *to appear*; Quære, whether it ſhould not have been under the Corporation Seal. Skin. 154. The King and the City of Cheſter.

7 If

7. If a Corporation have a Power to *remove a Man* &c. at their Will and Pleaſure this muſt be under the Common Seal; but a Return to a Mandamus Debito modo amotus may ſuffice. Vent. 355. Trin. 33 Car. 2. B. R. in Haddock's Caſe.

8. A *Mandamus* being directed to the Mayor and Burgeſſes of Abington, *to reſtore* Mr. Holt to the Recorder's Place, they *return'd that the King* by his Letters Patent *gave them Liberty to make a Recorder Durante Bene-placito*; It was ſaid by Mr. Wylde, that a Corporation can't determine their Will but under their Corporation Seal. Freem. Rep. 428. pl. 575. Trin. 1676. Holt v. Medlicott.

3. Salk. 103. pl. 4. S. C. in totidem Verbis.

9. A Corporation *can't do an Act in Pais without their Common Seal*, yet they *may do an Act upon Record*; So the City of London every Year makes an Attorney in B. R. without either Sealing or Signing, and they are eſtopp'd by their Act to ſay it is not their Act. The Mayor's Hand is not neceſſary to a Return, for he is liable in an Action for a falſe Return without it in his private Capacity; it is ſufficient Evidence that the Writ was deliver'd to him, and that there is a Return made, and then the Mayor muſt ſhew the Contrary; and the Mayor, or any other Magiſtrate, that procures the falſe Return, tho' without the Common Seal, or the Mayor's Hand to it, is liable not only in their Corporate, but their Private Capacity; Per tot. Cur. 1 Salk. 192. pl. 4. Hill. 1 Ann. B. R. in Thetford (Mayor's) Caſe.

(G. 3) Acts done by them good or not, being not done by the whole Body.

1. 33 H. 8. *cap.* 27. *ALL and every particular Act, Order, Rule, and Statute, made by the Founders of any Hoſpital, College, Deanry, or other Corporation, whereby the Grant, Leaſe, Gift, or Election of the Governor or Ruler of ſuch Corporation, with the Aſſent of the major Part of thoſe as ſhall have a Voice, or Aſſent to the ſame, ſhall be in any wiſe hindred or let by one or more, being the leſſer Number of ſuch Corporation, contrary to the Common Law of this Realm, ſhall be void, and of no Effect.*

2. *And all Oaths taken by any Perſon of ſuch Corporation for the Obſervance of any ſuch Order or Statute, ſhall be void; and no Member of any ſuch Corporation ſhall be compelled to take an Oath for the obſerving ſuch Statute on Pain that every Perſon giving ſuch Oaths ſhall forfeit 5 l. to be divided between the King and the Proſecutor to be recovered in any of the King's Courts of Record.*

Poph 211, 212 S. C. but not S. P.

3. Corporation of Mayor, or Bailiffs, and Burgeſſes of Windſor, *may make Leaſe* for Years. *One Bailiff only aſſents*; the Leaſe was void, and ſo it would had two only aſſented; and it was agreed, that if the greater Part of Burgeſſes aſſent it is good, and it is not neceſſary that all be *preſent at the Sealing*, if their Aſſents be had before. D. 282. b. Marg. pl. 26. cites Good's Caſe.

The Mayor and Commonalty are one indiviſible Body, the Mayor, as Mayor,

4. The *Mayor and Commonalty* of Southampton *have an Aſſignment from the King of a Sum of Money to be paid Yearly to them and their Succeſſors* out of the Cuſtoms of this Town and Port; the *Mayor alone makes an Acquittance* upon receiving it; this does not bind the Corporation in ſtrictneſs of Law, but becauſe 100 *Precedents were ſhewn* which allow'd

allow'd it, *it was allowed* by all the Judges of England. Jenk. 162. pl. 9.

can do nothing regularly, for he is the Head of the Corporation aggregate, and is only a Part of it; but Uſage and Precedents are not to be neglected in things indifferent, or which are not Mala in ſe. Jenk. 163. pl. 9.

5. The King did grant that the Pariſhioners of Wallingford ſhould be a Corporation to bargain and ſell, and that the greater Number of the Pariſhoners there did make Leaſes and Eſtates, and there was an *Uſage, that at the Time of meeting for the making* of any ſuch *Leaſes* by them, *they did uſe to ring a Bell, by the which Notice was intended to be given of the Aſſembly*, and that after ſuch Bell rung 20 of the Pariſhoners then preſent did make a Leaſe, there being 100 others in the Pariſh not preſent, and yet this was adjudged in the Court 32 Eliz. to be a good Leaſe, and he ſaid, that if there be a *Day and Place by Uſage certain for their Meeting*, in ſuch Caſe there needeth no Warning. Lane 21. Paſch. 4 Jac. in the Exchequer cited by Tanfield Ch. B. in Caſe of St. Saviour's Pariſh.

6. Where an Act is to be done by a Corporation, all the Members *ought to be aſſembled together to* conſent, but this cannot be ſeperately and apart by them at ſeveral Times, for then it is Factum Singulorum. Dav. 48. a. Paſch. 5 Jac. B. R. in the Caſe of the Dean and Chapter of Fernes.

7. In a Trial at Bar for the Parſonage of H. in the County of O. the Church being in the Preſentation of the Dean and Canons of W. where there are 12 Canons beſides the Dean, which in all make up 13 of the Corporation, it was held, 1ſt. That *Prima Facie, in all Acts done by a Corporation, the Major Number muſt bind the Leſſer*, or elſe Differences could never be determined. 2dly, That Acts done by the Corporation *ought to be done by the Conſent of the Major Number*, or elſe they are not valid, and therefore *where the Corporation conſiſts of* 13, *there ought to be* 7 *to make a Chapter*; but the *Act of the Major Number of thoſe* 7 *is binding to the Corporation.* But *if the ancient Uſage hath been, that Acts have been done from Time to Time by the major Number of thoſe that are preſent, altho' they are but* 3 *or* 4, it ſhall be then intended that that was Part of their Conſtitution at the Beginning, and ſo *what is done by them ſhall be binding to the reſt*; and if it were otherwiſe, it would avoid Multitude of Leaſes; for it is the common Practice in moſt Places, to ſeal Leaſes by the major Number of the Dean and Prebendaries that are reſident at the Time when the Leaſe was made. Freem. Rep. 504. Paſch. 1693. Haſcard v. Somany.

8. If an *Act* to be done be *referr'd to the conſtituent Members of a Corporation*, nothing can be done but by the Majority of thoſe who are the conſtituent Part of the Corporation; *but* where a thing is referr'd *to be done by the Commonalty*, there the Majority of thoſe, who are preſent (all being ſummoned) will determine and bind the reſt, but in the other Caſe the Majority of thoſe who are preſent will not do; Per Cur. Mich. 6 Ann. B. R. The Queen v. Lock.

9. A Corporation *aggregate* conſiſting *of* 2 *Bailiffs and Burgeſſes &c.* and *one* of the Bailiffs and Burgeſſes *made a Leaſe in their Politick Capacity to the other* Bailiff *in his natural Capacity.* The Court was of Opinion, that the Bailiffs make but one Officer, and the one cannot act without the other; therefore *if a Leaſe is made by the Corporation to one of them, he is both Leſſer and Leſſee, which cannot be.* 8 Mod. 303. Trin. 10 Geo. 1725, Salter v. Groſvenor.

10. A *ſole Corporation*, as a Biſhop or a Parſon, could not make a Leaſe to himſelf, becauſe he *cannot be Leſſor and Leſſee*, and the Law is the ſame in a Corporation aggregate, as Dean and Chapter, for a

Leaſe cannot be made *by the* Chapter without the Concurrence of the Dean; and for the ſame Reaſon, a Leaſe cannot be made to the without the Concnrrence of the Chapter, but it *may be made to any of the Prebendaries, becauſe it is not neceſſary thae any of them ſhould join in the Leaſe*, for a Prebendary is not an integral Part of the Body Corporate. 8 Mod. 304. Trin. 10 Geo. 1725. in Caſe of Salter v. Groſvenor.

11. Where-ever *Notice* is given *of the meeting* of a Corporation *for one particular Buſineſs only*, the Body *cannot go on to other Buſineſs unleſs the whole Body is met, and it is done by Conſent.* Barnard. Rep. in B. R. 80. Mich. 2 Geo. 2. ſays this was laid down as a Rule by the Ch. Juſtice in the Caſe of the King v. Wakes.

12. A *Charter required*, that *the Preſence of the Mayor* be neceſſary *at all Corporate Aſſemblies.* The Corporation were aſſembled, and a Matter being propoſed, the *Mayor diſſolved the Aſſembly*, but the *remaining Part of the Corporation continued together, and proceeded.* It was objected, that ſuch After-Proceedings were irregular; But the Court ſaid, it was very true, that no new Buſineſs can be propoſed in the Abſence of ſuch Officer, but that *the Aſſembly has* always *a Right to proceed in the Buſineſs* which was *begun when he was preſent.* Barnard. Rep. in B. R. 385, 386. Mich. 4 Geo. 2. The King v. Norris.

(G. 4) Grants to or by Corporations, and by what Names or Titles they may take, or grant, and where there is a Variance or Miſnomer.

1. WHERE a *Feoffment* is made *to a Corporation and a ſingle Perſon*, it ought to be by Deed, and that the Livery be made to the Attorney of the Corporation, authoriſed by Deed, and to the other Perſon alſo, and then they ſhall be *Tenants in Common*, otherwiſe the Corporation can take nothing; Per Huſſey. Thel. Dig. 27. Lib. 2. cap. 3. S. 10. cites Hill. 7 H. 7. 9.

S. C. cited by Hobart Ch. J. Hob. 33.—Gilb. Hiſt. of C. B. 186. cites S. C. for here the Saint's Name is the only Specification of the Party in the Deviſe, which is miſtaken.

2. If I *deviſe* Land *to the Abbot of St. Peter, where the Foundation is St. Paul*, the Deviſe is void; Per Englefield J. Quod non negatur. Br. Deviſe, pl. 2. cites 19 H. 8. 8. [b. pl. 1.]

4 Le. 223. pl. 357. the Preſident of Corpus Chriſti College's Caſe, S. C. and S. P. per Cur. and the Serjeants and others.

3. If a *Maſter* or Preſident *of a College* by his Teſtament *deviſes Land to the ſaid Houſe* whereof he is Preſident, and dies, the Deviſe is void, becauſe they have no Head. Dal. 31. pl. 13. Anno 3 Eliz. and cites 13 H. 8. 13. S. P.

Without their Head they cannot take to the Uſe of the Houſe; For without a Head the Body is imperfect. Dal. 31. pl. 13. Anno 3 Eliz.

4. If a Grant is made *to or by a Corporation in Time of Vacation*, it is void. Litt. S. 443.

If *during the Vacation of the Abathy of Dale a Leaſe for Life, or a Gift in Tail be made, the Remainder to the Abbot of Dale and his Succeſſors*, this Remainder is good, if there be an Abbot made during the particular Eſtate. Co. Litt. 264. a.

If

If there be *Mayor and Commonalty of D.* and the *Mayor dies, a Grant* made *to the Mayor and Commonalty of D. is void ; but* in that Caſe, if a Leaſe for Life be made, the *Remainder to the Mayor and Commonalty of D.* the Remainder *is good*, if there be a Mayor elected during the particular Eſtate. Co Litt. 264 a.

5. The Dean and Canons of Windſor were *incorporated* by Act of Parliament *by the Dean and Canons of the King's Free-Chapel of his Caſtle of Windſor*, and they made a Leaſe by the Name of the *Dean and Canons of the King's Majeſty Free-Chapel of the Caſtle of Windſor, in the County of Berks.* All the Juſtices held the Leaſe good enough ; For though the King in Parliament ought to call it His Caſtle, yet when another ſpeaks of it he is more apt to call it The Caſtle, and conſequently ſuch Variance is not material. Mo. 71. pl. 195. Trin. 6. Eliz. The Dean &c. of Windſor's Caſe.

6. And though *more* be *put into the Words of the Leaſe than are in the Words of Incorporation* yet it *is not prejudicial if every Word is true* ; As if he had added of the Caſtle of New Windſor, or the Chapel of St. George the Martyr, becauſe it is true, and there is not any other Windſor known, or any other St. George than the Martyr, and though it might otherwiſe, yet it ſhall not be intended. Mo. 72. in pl. 195. Trin. 6 Eliz. in the Dean &c. of Windſor's Caſe.

7. The *Cooks of London* were *incorporated* by Ed. 4 and *that two Principals of the Community, by the Aſſent of* 12, *or* at the leaſt of 8 *Perſons of the ſaid Community, in myſteria prædicta maxime expertes ſingulis Annis eligere poſſint et facere de Communitate illa duos Magiſtros ſive Gubernatores ad ſupervidend* &c. *et quod iidem Magiſtri vel Gubernatores et Communitas, ſhould have perpetual Succeſſion, and a Common Seal* &c. *and that they might purchaſe and enjoy Lands* &c *in Fee* &c. *A Deed of Bargain and Sale is made by A. B. C. and D. Maſter and Wardens of the Craft and Myſtery, and the Commonalty of the ſame Craft and Myſtery, and F. L. of the one Part, and R. Dormer of the other Part.* Held here, that the Corporation was miſnamed, for here are 4 *particular Perſons nam'd, and Maſter is added at the End in the ſingular Number*, and therefore it cannot refer to them all, or to two of them, and if it refers to the four the Charter doth not Warrant this, for that is a greater Number than the Charter wills, and if it ſhall refer to the laſt Name, then there are not Maſters, and the Plural Number is Material, and in the Indenture they are call'd Maſter and Wardens, and *Warden is not in the Charter*, nor can be Part of the Corporation, and if in the Place of Wardens, Governors had been put, they ought to have put (or) in the Place of (et) as Maſters or Governors, but as for the Words (*Craft and Myſtery*) which are put in the Indenture before the Words (and Commonalty) it is but *ſurpluſage, which will not make the Deed* of Bargain and Sale *void.* Plow. Com. 537. Trin. 20 Eliz. Croft v. Howell.

8. A Corporation was made by the Name of the *Dean and Chapter Eccleſiæ Cathed' Sanctæ & individuæ Trin. Caerlil'*, made a Leaſe by the Name of *Decanus Eccleſiæ Cathed'. Sanctæ Trin. in Caerlil'. & totum Capitul' de Eccleſia prædict'*. Six were againſt three, that it is good notwithſtanding the Variance, which is not in Subſtance of the Name. D. 278. pl. 1. Mich. 21 Eliz. Carliſle Dean and Chapter's Caſe. Gouldsb 122. S. C. cited by Gawdy as held ſo by the better Opinion 11 Eliz.

9. There is no Book of Law which avoids Leaſes or Grants of Corporations for Variance in any of theſe four Circumſtances, viz. *Addition, Interpoſition, Omiſſion*, or *Commutation*, if they retain the four firſt Principles of Subſtance, viz. *Name* of *Perſons*, of *Houſe, Foundations, or Dedication, Place known before* the Foundation in which the Houſe is ſituate ; Per Manwood Ch. B. Mo. 235 pl. 367. Hill. 29 Eliz. in Fanſhaw's Caſe. There muſt be no Omiſſion of any material Part. And. 23. pl. 47 Paſch 3 & 4 Ph. & M. Dean and Chapter of

Eaton's Caſe. —— D. 150. a. pl. 84. Trin. 3 & 4 Ph. & M. S. C. they were incorporated by the Name

Name of Præpoſiti & Collegii Regalis Collegii beati Mariæ de Eaton juxta Windſor, and made a Leaſe by Name of Præpoſiti, & Sociorum Collegii Regalis de Eaton &c. omitting Collegium beatæ Mariæ; And all the Juſtices held this a void Leaſe. D. 150 a. pl. 84. Trin. 3 & 4 Ph. & M. and ſays, that it was ſo adjudg'd Mich. 10 Eliz & Mich. 18. where the Place of the Corporation, viz. Cheſter, was omitted in the Grant of the Dotation made to the Dean and Chapter, but in the Habend' it was inſerted ——— Mo 13. pl. 52. S. C. that the Words (Sanctæ Mariæ) were omitted, and therefore held void; But the Leaſe by the Dean and Chapter of the Cathedral Church Peterburgenſis where they were incorporated by the Name Sancti Petri Burgenſis was not void, cites a great many Year Books.

10. The *Provoſt, Fellows, and Scholars of Queen's College Oxon. are Guardians of an Hoſpital* in Southampton, and they *leaſed* Parcel of the ſaid Hoſpital *by the Name of Provoſt, Fellows, and Scholars, Guardianus of the Hoſpital*; it was objected, that it ſhould be *Guardiani*, becauſe the College conſiſts of many Perſons, and every one is capable, and not like to Abbot and Convent; But the whole Court held, that the College is as one Body, and as one Perſon, and ſo the Leaſe and Declaration were both good. Le. 134. pl. 183. Hill. 30 Eliz. Queen's College Oxon's Caſe.

11. If the Queen will found an *Hoſpital* by the Name Quod fundavimus *ad rogationem Chriſtopheri Hatton Cancellarii Angliæ*, all the ſame *ought to be expreſſed in every Grant* made by, or to the ſaid Hoſpital; Per Egerton Sollicitor General Arg. Le. 164. Mich. 30 & 31 Eliz. in Scacc. in Caſe of Marriot v. Paſcall.

12. So Quod fundavimus a*d relevandum pauperes*. Ibid.

13. And ſometimes the *Number of Perſons incorporated, if it be in the Charter*, it ought to be uſed in all Acts made by or to them; *As Maſter and 6 Chaplains*; Per Egerton Sollicitor General Arg. Le. 164. Mich. 30 & 31 Eliz. in Scacc. in Caſe of Marriot v. Paſcall.

2 Le. 97. pl. 119. S. C. held accordingly.

14. The Dean and Chapter of Exeter made a Leaſe by the Name of the *Dean and Chapter of St. Mary of* Exeter, whereas they were incorporated by the Name of the Dean and Chapter of St. Mary *in* Exeter; but this was held to be no material Variance. Cro. E. 167. pl. 3. Hill. 32 Eliz. B. R. Willis v. Jermin.

Sav. 128. pl. 198. S. C. adjudged.

15. In Ejectment of a Leaſe by the *Warden and College of All-Souls of Oxford*, the Jury found the Leaſe to be made by the *Warden and College of All-Souls of Oxford in the County of Oxford*. It was objected, that this could not be the Leaſe on which the Plaintiff had declared, becauſe it varied from that Leaſe, the one being made by the Warden &c. of All-Souls of Oxford, and the other by the Warden of All-Souls of Oxford in the County of Oxford. But per Cur. the Plaintiff had given Judgment, for the Verdict having ſet forth, that the Warden &c. was ſeiſed, and being ſo ſeiſed, made the Leaſe &c. and ſealed it with their Common Seal, all this is the ſame as in the Declaration, and the Words, (viz.) (in the County of Oxford) are not added as Part of the Name of the Corporation, but only to ſhew in what County Oxford is. 1 And. 248. pl. 261. Paſch. 32 Eliz Carter v. Cromwell.

There is a Diverſity between ancient Corporations and Corporations made of late Time; For ancient Corporations may by Uſage have divers ſeveral Names; And Demiſes, Grants &c. by any of them are good enough. 10 Rep. 126. Mich. 11 Jac. C. B cites abundance of Caſes ——— S. P. by Hale Ch. B. as by the Name of Burgenſes, and of Ballivi and Burgenſes; But if the Name of Ballivi and Burgenſes be a Name which they have recorded within Time of Memory, they cannot preſcribe by it, but by their ancient Name, till ſuch a Time, and then &c as in Dyer. Hardr. 504. Paſch. 21 Car. 2. in Scacc. in Caſe of Attorney General v. Farnham (Town in Surry) ——— Gilb. Hiſt. of C. B. 186, 187. S. P.

16. It was held per Curiam upon Evidence, that a Corporation *may be known by two Names*, and if it hath been ſo known *Time out of Mind*, that a Grant made by either of the Names is good. Cro. E. 351. pl. 4. Mich. 36 & 37 Eliz. B. R. Vaughan v. Gainsford.

17. A *Bargain and Sale by the King for any Conſideration*, to a Corporation *is good*, although the King cannot ſtand ſeiſed to the Uſe of another; and *the Conſideration of Money* paid or *mentioned to be paid*, altho' *by any Stranger*, makes the Conveyance of Bargain and Sale valid. Jenk. 270. pl. 88.

18. King H. 8. incorporated Trinity College in Cambridge by the Name of *Maſter, Fellows, and Scholars of the College of the Holy and undivided Trinity in the Univerſity of Cambridge*; and Anno 6 E. 6. they made a Leaſe by the Name of the *Maſter, Fellows* &c. *of Trinity College*, but left out the Word *(Univerſity.)* Two Juſtices thought the Leaſe good, but the two others, and the Ch. J. though it void, but he moved the Parties a ſecond Time to an Agreement, and would not as yet give Judgment. 2 Brownl. 243. Paſch. 7 Jac. B. R. Trinity College's Caſe.

19. A *Deviſe* of an Houſe was *to his Wife for Life*, Remainder *to the Maſter and Wardens of the Queen's Free-School of St. Olave's Southwark*; In Ejectment brought by the ſaid Maſter and Wardens, it was objected, that the Corporation could not take by this Deviſe, becauſe there is an Exception in the Stat. 32. H. 8. cap. 5. of Wills of all Bodies Politick or Corporate, ſo that they are excepted from taking by the Will; The Court were all clear of Opinion, that the Plaintiff had a good Title. 2 Bulſt. 33, 34 Mich. 10 Jac. Maſter &c. of St. Olave's Caſe.

20. The *Dean and Chapter* of Norwich were incorporated by H. 8. by the Name of the Dean and Chapter of the Biſhop of Norwich and his Succeſſor; they *ſurrendred their Charter* to Ed. 6. *and afterwards were incorporated* by him *by the Name of the Dean and Chapter Sanctæ individuæ Trinitatis Norwici ex Fundatione Regis Ed.* 6. They *made a Leaſe by the old Name* of Incorporation, leaving out (Ex Fundatione Regis Ed. 6.) and adjudged that the Leaſe was good. Palm. 491. Hill. 3 Car. B. R. Heyward v. Fulcher.

Jo. 166. S. C. the Court held the Leaſe good, inaſmuch as the firſt Corporation was not extinct, and the Leaſe made by the ancient Name was good notwithſtand the ſaid Omiſſion in the Grant and Leaſe.

21. Debt upon a *Bond* made to the Plaintiff's Wife Dum ſola *by the Corporation of Wells, by the Name of the Mayor, Aldermen, and Burgeſſes.* Upon Non eſt Factum pleaded, the Jury find a ſpecial Verdict, that *Queen Eliz.* in the 31ſt Year of her Reign, *created* them a Corporation *by the Name of the Mayor, Maſters, and Burgeſſes of Wells*, and that *Car.* 2. in the 35th Year of his Reign, by his Letters Patents, *granted to them that they ſhould be known by the Name of Mayor, Aldermen, and Burgeſſes* &c. and by this laſt Name they entred into the Bond; and if this be the Bond of the Mayor, Maſters, and Burgeſſes of Wells, then &c. And adjudged for the Defendants, becauſe by the taking of the ſecond Letters Patents the *firſt Name is intirely extinguiſh'd*; but it was agreed, that a Corporation *might have two Names*, the *one by Preſcription*, and *the other by Grant, or both by Preſcription, but not two by Grant.* Lord Raym. Rep. 80, 81. Paſch. 8 W. 3. Knight & Ux' v. the Mayor, Maſters, and Burgeſſes of Wells.

22. The *Names of Corporations* are not arbitrary Sounds meerly ſo individuative, but *have a certain and ſignificant Meaning*, and *if that be kept to, though the Words and Syllables be varied, yet the Body Politick is very well named*, for then there is enough ſaid to ſhew that there is ſuch an Artificial Being, and to diſtinguiſh it from others. Gilb. Hiſt of C. B. 181.

New Abr. 592. S. P. in totidem Verbis.

23. Any *Corporation by Act of Parliament may take by another Name than that by which it was inſtituted*, for in Acts of Parliament the Subject and Deſign of the Legiſlature muſt be reſpected, and thoſe that have Power wholly to change the Name of Things, have certainly Power to alter

10 Rep. 57. b. Trin. 11 Jac. in the Chancellor of Oxford's Caſe S. P.

alter it in any Act of theirs, and all inferior Jurisdictions are bound to support the Sense of the Law, and not to destroy it, if it has any Meaning, and therefore the Statute that Advowsons of Popish Recusants convict be given to the Chancellor and Scholars of the University of Oxford, and they bring their Action by the Name of the Chancellor, Masters, and Scholars of the University of Oxford, this is well enough. Gilb. Hist. of C. B. 187.

24. If a *Writ* be brought *by Hugh Prior of Coventry*, this is too general, and shall abate, but in a Lease so made had been good. Gilb. Hist. of C. B. 189.

New Abr. 503. S. P. in totidem Verbis —— 6 Rep. 65. a. Mich. 4 Jac. C B in Sir Moyle Finch's Case, S. P. —— 10 Rep. 125. b 126. a. S. C. & S. P. cited by Coke Ch. J. Mich. 11 Jac. in the Mayor and Burgesses of Lynn's Case.

25. There is a *Difference* between *Writs*, *Declarations* &c. and *Obligations and Leases*; for that if the Name of a Corporation be mistaken in a Writ, *a new Writ may be purchased* of common Right; *but* it were *fatal*, *if mistaken in Leases and Obligations*, and the Benefits of them would be wholly lost; and therefore one ought to be supported, and not the other. J. Abbot of W. granted Common of Pasture to J. S. by the Name of W. Abbot of W. this is good enough Causa qua supra; But if this Name had been thus mistaken in a Writ, it had been fatal. Gilb. Hist. of C. B. 189.

(G. 5) Grants by a Corporation. Good or not. In what Cases.

1. THE *Queen makes a Lease for Years* of Land *to the Men of Chesterfield*, *rendering Rent*, and the Grant was to them *by the Name of the Aldermen of Chesterfield*, and they *by the Name of Aldermen of Chesterfield grant their Interest to C.* in the said Land; and it was agreed by the Court that the Grant by them was void; for they by the Grant of the Queen have Capacity to take, but not to grant the Land to another. Cro. E. 35. pl. 3. Mich. 26 & 27 Eliz. B. R. The Aldermen of Chesterfield's Case.

2. A Corporation of Mayor and Commonalty, or of Bailiffs, Burgesses &c. may *by* their *Common Seal grant* their *Lands* &c. for Life or Years, or *in Fee*, and this shall be good, and bind their Successors; Per tot. Cur. Sid. 162. pl. 15. Mich. 15 Car. 2. B. R. Smith v. Barret.

3. No Person, Natural or Politick, *who has a Fee*, but may alien it; A *Bishop*, *Dean*, *and Chapter* &c. are Corporations, which have their *Estates under a Trust*, yet they may alien; Per Holt. Skin. 602. Mich. 7 W. 3. B. R. in the Banker's Case.

4. *And* tho' a *Parson* may not alien by himself, yet he may *by the Consent of the Patron and Ordinary*; Per Holt. Skin. 602. Mich. 7 W. 3. B. R. in the Banker's Case.

(G. 6) Grants to a Corporation. To what Perſons it ſhall be ſaid to extend; And what Paſſes.

1. COVENANT was brought *by the Mayor and Commonalty of N. againſt the Mayor and Commonalty of D.* and *counted that the Defendants* by their Deed had *covenanted that the Plantiffs ſhould be quit of Murage*, Pontage, Cuſtom, *and Toll in D. of all thoſe of N. and that they had taken Toll by certain of their Burgeſſes, of certain of their Burgeſſes of N.* wrongfully &c. And there adjudg'd that the *taking of the Common Servant is the taking of the Corporation*, and ſo the Covenant broken; Quod nota; and it is not mention'd there if the Servant was Servant by Specialty under the Common Seal of the Corporation, or not. Br. Corporations, pl. 14. cites 48 E. 3. 17.

Br. Corporations, pl. 15 cites S. C. —— *Contra* if it be made *by another particular Perſon.* Br. Corporation pl. 74. cites S. C.

2. It was ſaid by Paſton, that if *Goods are given to an Abbot, and to another*, the Property is jointly in them two, and nothing in the Houſe &c. and that *the other ſhall have all by Survivorſhip if the Abbot dies* Thel. Dig. 26. Lib. 2 cap. 2. S. 24 cites Trin. 9 H. 6. 25. and that ſo it is agreed in a Leaſe for Years made to them. Trin 16. H. 7. 15.

3. Obligation made *to J. P. Alderman of Saint Mary's Guild of D. and his Succeſſors*, and in Fact *there is no ſuch Corporation* there, the Obligation ſhall go to the Executors, and Succeſſors is Void. Br. Obligation, pl. 68. cites 20 E. 4. 2.

4. *So* of *Bonds* made *to the Church-Wardens in London, and their Succeſſors*, it is void to the Succeſſors, and good to the Executors; For they are not incorporated. Br. Obligation, pl. 68. cites 20 E. 4. 2.

5. *And* where Bond is made *to the Dean of P. and his Succeſſors*, and it is *not* ſaid Dean and Chapter, and his Succeſſors, this is good to the Executors, and void to the Succeſſors. Br. Obligation, pl. 68. cites 20 E. 4. 2.

6. *Contra* if it had been *to the Dean and Chapter and his Succeſſors*; For he has 2 Capacities, viz. to him and his Heirs, and another with the Corporation. Br. Obligation, pl. 68. cites 20 E. 4. 2.

7. *And* if Obligation be made *to the Biſhop of L. and his Succeſſors*, or *Parſon of D. and his Succeſſors*, this goes to the Executors, and yet they are a Corporation; For they have two Capacities. Br. Obligation, pl. 68. cites 20 E. 4. 2.

8. *Contra of Abbot or Prior.* Br. Obligation, pl. 68. cites 20 E. 4 2.

9. If *Land* be granted *to a Mayor and Commonalty without ſaying to their Succeſſors*, they have Fee-Simple. Thel. Dig. 20. Lib. 1. cap. 22. cites 11 H. 7. 12.

10. It was ſaid, that if Land be given *Jo. Stile Dean &c. and to his Succeſſors, and to Jo. Stile Clerk*, being *the ſame Perſon, and to his Heirs*, that this is a good Gift, and that *he ſhall be Tenant in Common with himſelf* for diverſe Reſpects. Thel. Dig. 27. Lib. 2. cap. 3. S. 11. cites Trin. 13 H. 8. 14.

11. If one *deviſes* Land *to A. N. Dean of Paul's and to the Chapter there, and their Succeſſors, and A. N. dies*, and a *new Dean is made*, and then the *Deviſor dies*, the Land ſhall veſt in the new Dean and Chapter according to the *Intent*, tho' by the Words it does not; For the chief Intent was to convey it to the Dean and Chapter, and their Succeſſors for ever, and the ſingular Perſon of A. N. was not the principal

cipal Cauſe, tho' perchance it was one of the Cauſes; Per Manwood. Pl. Com. 344. b. Trin. 10 Eliz.

(G. 7) Actions. Obligations &c. made to or by Corporations. Liable; who, where the Head is remov'd. And Pleadings.

Br. Non eſt Factum, pl. 3. cites S. C.

1. NOTE; that the *Deed of an Abbot and Covent*, which Abbot is depoſed or deraigned after, is good. B. Abbe, pl. 19. cites 9 H. 6. 32.

Br. Non eſt Factum, pl. 3 cites S. C.

2. *Contra* of the Deed *of an Abbot who is a Uſurper where there is a lawful Abbot at the Time* &c. Ibid.

3. *Bond* was made *by Prior and Covent*, and after the *Prior was made Biſhop of D.* and *in Action againſt him* upon the the ſame Bond *he pleaded this Matter, and that the Action ſhall be upon the Succeſſor, and not upon the Predeceſſor*, for the Corporation is charged only, and a good Plea *without Traverſe*, abſque hoc *that he alone made the Bond.* Br. Traverſe per &c. pl. 82. cites 21 H. 6. 3.

4. *Debt of Contract againſt the Provoſt of the College* of T. in Cambridge *for Stuff bought, which came to the Uſe of the College*, and that the ſame Provoſt, viz. T. M. *was remov'd, and the now Defendant was elected*, and made Provoſt &c. and Exception was taken that he *did not ſhew how he was removed*, & non allocatur per Cur. For if he be removed by any way, and the other was Provoſt, it is ſufficient, and *this only is traverſable, and not the Cauſe of the removing*; for Action of Debt ſhall be brought againſt Executors generally, without ſhewing how they were made Executors; For if he be Executor it ſuffices, and and the Entry of the Prothonotary is general, that he was removed, without ſhewing how, and for what Cauſe. Br. Pleadings, pl. 87. cites 5 E. 4. 70.

5. Where a Man Pleads Payment *to the Chamberlain of London*, viz. *to one J. and his Succeſſors* &c. *according to the Form of the Condition* of the Obligation aforeſaid, he *ought to ſhew that the ſaid Chamcerlain was depoſed, or the like, and then he paid it to W. N. his Succeſſor, who was elected* Chamberlain &c. by which he pleaded accordingly; For otherwiſe it ſhall be intended that the firſt continued Chamberlain; So of an Abbot &c. Br. Pleadings, pl. 98. cites 8 E. 4. 18.

Br. Abbe, pl. 13. cites S. C. and 5 H. 7. 24.

6. In Debt, the *Prior* of B. *made an Obligation without the Covent, and* after was *made an Abbot of another Houſe*, and the Obligee brought Debt againſt him, and declared upon the Matter, and the *Defendant ſaid, that the Goods did not come to the Uſe of the Houſe of which he is Abbot, and demurred* in Law upon the Declaration; Per Vaviſor J. this is a Body Politick, and none ſhall be charged but the ſame Body Politick, and an Abbot or Prior can take nothing but to Uſe of the Houſe, and when he is made an Abbot of another Houſe, he is ſevered from the firſt Houſe, and therefore he is diſcharged, and the Covent of the firſt Houſe ſhall not be charged, becauſe they were not bound unleſs the Goods came to the Uſe of the Houſe, and if he be *depoſed, and after re-elected* into the ſame Houſe, yet he ſhall not be charged, for he is in in another Courſe, and all the other Juſtices were to the contrary at this Time; but after Rede & Fineux agreed with Vaviſor, 5 H. 7. 25. and Wood, Brian, Keble, and Townſend to the

contrary

contrary, becauſe he was *at all Times Perſonable* when he was immediately made Abbot of another Houſe; contrary where he is depoſed and re-elected, and therefore Brook makes a Quære, for it is dubious to him; and per Vaviſor, 5 H. 7. 25. an Abbot may give the Goods of the Houſe, and make a Charge during the Time that he is Abbot, and make an Obligation, which is good if it be ſued during the Time that he is Abbot, but the *Succeſſor* ſhall not thereof charged, and therefore becauſe the Capacity by which he charged is determined, the Charge determines, and the beſt Opinion was with him, as it ſeems, and agreed with Vaviſor the principal Caſe. 9 H. 7. 23. Br. Barre, pl. 69. cites 3 H. 7. 11.

7. If the *Abbot of B.* be *bound in an Obligation by his own Seal*, and after is *tranſlated to the Abby of St. A.* Action of Debt lies againſt him as Abbot; per Vaviſor for Law; *otherwiſe* it ſeems where he is *depoſed, and after* is *re-elected* Abbot, in this Houſe, or in Another; For there the Action was once extinct, contrary here. Br. Nonabilitie, pl. 28. cites 9 H. 7. 23.

(H) *Who* ſhall be ſaid the *Founder*.

1. HE that gave the firſt Poſſeſſions **to the Corporation is the Founder. Co. 10. Hoſpital 33. b. 38 Aſſ. 22. 50 Aſſ. 6.** Jenk. 270. pl. 88. S. P.—Br. Corody pl. 12. cites S. C. but S. P. does not clearly appear.——Fitzh. Grant, pl. 1. cites S. C. & S P.

2. [So] **If the King hath a Chapel, and gives Poſſeſſions to it, by which he is the Founder thereof,** though the Seculars are after tranſlated into Regulars, **yet the King ſhall be the Founder thereof, becauſe he gave the firſt Poſſeſſions.** 38 Aſſ. 22. Br. Corody, pl. 12. cites S. C. but I do not obſerve S. P. there.—Fitzh. Grant, pl. 1. cites S. C. & S. P.

3. **If the** King and a common Perſon give Poſſeſſions **to a Corporation** at one and the ſame Time, **the King ſhall be the Founder only by his Prerogative. 50 Aſſ. 6. per Knivet.** Br. Corodies, pl. 2. cites S. C. & 44. E 3. 24.—If the *King and a common Perſon join in a Foundation* the King is the Founder, becauſe it is an intire Thing. If a *common Perſon founds an Abbey, or Priory, with Poſſeſſions of ſmall Value, and the King after endows it with great Poſſeſſions*, yet the common Perſon is Founder.

If a *common Perſon founds a Chantery*, and after the *King tranſlates it, and makes it a Monaſtery, and endows it with Poſſeſſions*, yet the common Perſons is in Law the Founder becauſe he gave the firſt Living

So if the *Tranſlation be from Regular to Secular, vel e contra.* 2 Inſt. 68.

4. Iſſue was taken in Caſe of a Corody, whether the *King* was *Patron of a Priory*, where he *preſented one to a Corody, by reaſon that his Progenitor founded a Chapel* there *before any Priory was there*; or whether the Biſhop of E. and his Predeceſſors, Time out of Mind, had been Patrons there. And Greene Juſtice ſaid, that when the *King had a Chapel of which he was Patron, and this was in the Hands of the Prior*, tho' *the Seculars were tranſlated into Regulars*, yet he who gave the firſt Poſſeſſion was Founder, and the Jury found for the King. Br. Preſentation, pl. 39. cites 38 Aſſ. 22.

5. *And* it was ſaid, that tho' there was no Prior there before, and *tho' the Priory was not founded in the Place where the Chapel was, yet*

becauſe *it was annexed, and the King was the firſt Patron of it*, the Patronage was the King's; Quod Nota. Br. Preſentation, pl. 39. cites 38 Aſſ. 22.

6. *And* becauſe they had made *Elections of Priors there without the King's Licence, to the Diſheriſon of him* and his Crown, it was agreed that the King recover the Patronage, and that the Temporalties be ſeiſed into the King's Hands for ſuch Diſheriſon and Contempt, till Satisfaction made to him. Ibid.

7. Founderſhip cannot *eſcheat*, for it is not held, that is, it cannot eſcheat *by Death without Heir*; Per Brooke. Br. Corodies, pl. 5.

8. *Nor* can it be *forfeited*, as Brooke thinks; For it is annexed to the Blood, which cannot be divided, as it is ſaid, after the Augmentation-Court took its Commencement, in Time of H. 8. For a Man who is Heir, to another cannot make another to be Heir. Br. Corodies. pl. 5.

9. If a *Biſhop* be *Founder of a Priory and Convent*, and the *Crown tranſlates this to a Dean and Chapter, and diſcharges the Monks of their Habit and Order*, yet the Biſhop remains Founder ſtill. 3 Rep. 74. Dean and Chapter of Norwich's Caſe.

Br. Prerogative, pl. 8. cites S. C.

10. He that gives the firſt Poſſeſſion to any Corporation is the Founder. Jenk. 270. pl. 88.

It is annexed to the Saint, and cannot be granted to any one,

11. Founderſhip is an *Incident inſeparable*, and is not grantable over. 11. Rep. 78. a. Magdalen Coll. Caſe cites Paſch. 7 Eliz. in Scacc. Wharton v. Morley.

and if the Church be *diſſolv'd, the Founder ſhall have the Land.* Br. Corodies, pl. 5.

12. A Founder having *given Statutes to the College cannot alter* them and give new Statutes, unleſs he had reſerv'd to himſelf an Authority for that Purpoſe. Skin. 513. ſays this Point was agreed in Caſe of Philips v. Bury.

(H. 2) Conſider'd How. And capable of What.

1. COrporation *aggregate* of ſeveral *is inviſible, immortal, and reſts only in Intendment* and Conſideration *of Law*, and therefore *Dean and Chapter cannot have Predeceſſor nor Succeſſor.* 10 Rep. 32. b. cites 39 H. 6. 13. b. 14.

2. *Nor* can they *commit Treaſon, or be outlaw'd, or excommuninated*; For they have no Souls, *nor* can they *appear* in Perſon *but by Attorney.* 10 Rep. 32. b. cites 21 E. 4. 72. a. and 30 E. 3. 15. b.

3. Corporation aggregate of many *cannot do Fealty*; For a Body inviſible cannot be in Perſon, nor can ſwear. 10 Rep. 32. b. cites Br. Fealty, [pl. 15.] 33 H. 8.

Ld Raym. Rep. 79. Paſch. 8 W. 3. S. P. in Caſe of Burghill v. Gibbons and Cambridge Univerſity, & al'.

4. It never was ſeen, that a Corporation might be *bound in a Recognizance or Statute Merchant*; Per Dyer. Mo. 68. in pl. 182. Trin. 6 Eliz.

5. Cor-

5. Corporations aggregate of many are *not capable of* theſe two *Protections*, either *Profectiuræ or Moraturæ*, becauſe the Corporation itſelf is inviſible, and reſts only in Conſideration of Law. Co. Litt. 130. a.

(H. 3) Diſſolution; And the Effect thereof.

1. IF the *Corporation of a Prebend be a Manor & Nient plus*, and *the Manor is recovered from him by Title paramount*, the Corporation remains, for he ſhall have Stallum in Choro, and Vocem in Capitulo, and he is ſtill a Prebendary. 3 Rep. 75. b. cites 15 Aſſ. pl. 8.

2. C. brought *Annuity* againſt the Dean and Canons of St. Stephen's Weſtminſter, and *counts, that* the ſaid C. *was ſeiſed of the ſaid Annuity by the Hands of M. Parſon of the ParishChurch of G. Predeceſſor of the ſaid Dean and Canons.* The Defendant *pleaded, that the ſaid Rectory of G. was Parcel of the Poſſeſſions of the Priory of Wells, which* Priory *was Parcel of the Priory of St. Stephen's in Normandy, which* Priory, and the Poſſeſſions thereof *were ſeiſed into the King's Hands, by reaſon of the War* between King E. 3. and the King of France, *and ſo continued in his Hands till the Time of King H. 5. and then* the Rectory of G. *was appropriated to the ſaid Priory* Time whereof Memory &c. which Kings continually took the Profits, till by Stat. 2 H. 5. it was ordain'd, that all Priories alien, and their Manors, Rectories &c. in England, which appertain'd to the ſaid Priories, or are appropriated or annexed &c. ſhall be to the King and his Heirs, *which Lands and Rectory came to King E. 4. who* by his Letters Patents *granted the Priory* alien, *and the ſaid Rectory to the Dean and Chapter, Defendants* &c. Upon Demurrer, Judgment was given for the Plaintiff. 2 And. 106, 107. pl. 57. in Caſe of the Biſhop of Rocheſter v. the Dean and Chapter of Rocheſter, cites it as Paſch. 18. H. 7. Rot. 416. The Prior of Caſtle Acre v. the Dean &c, of Weſtminſter.

3. Grant was made to John of Gaunt, Duke of Lancaſter, of *all Strays within his Fees*, and a Prior of Splading *held of the Grantee certain Land in B. in Frankalmoign*, and Stray came there, and the Grantee claim'd it by his Grant; And the beſt Opinion was, that he ſhall have it; For he has Tenure there, and therefore he has Fee there; For if the Houſe be diſſolv'd he ſhall have the Eſcheat, and the Tenant may have Writ of Meſne, or Ne injuſte Vexes. Br. Patents, pl. 61. cites 7 E. 4. 11.

4. If the *Abbot and Convent gives all their Lands and Poſſeſſions to another in Fee*, yet the Corporation remains. Br. Extinguiſhment, pl. 35. cites 20 H. 8. per Fitzh. J.

5. If a Corporation which has a *Common in Groſs* be determin'd or diſſolv'd, the Common *is extinct*. Thel. Dig. 20. Lib. 1. cap. 22. S. 28. cites it as the Opinion of Paſch. 27 H. 8. 10.

6. If *Lands holden of J. N.* be given to an Abbot and his Succeſſors, in this Caſe, if the *Abbot and all the Covent die*, ſo that the Body Politick is diſſolved, the *Donor ſhall have again his Land*, and not the Lord by Eſcheat. Co. Litt. 13. b.

7. *So* if Land be given in Fee-ſimple *to a Dean and Chapter, or* to a *Mayor and Commonalty*, and to their Succeſſors, and after ſuch Body Politick, or Incorporate is diſſolved, the Donor ſhall have again the Land, and not the Lord by Eſcheat; and the Reaſon, and the Cauſe of this Diverſity is, for that in the Caſe of a Body Politick or Incorporate,

porate, the Fee-ſimple veſted in their Politick or Incorporate Capacity created by the Policy of Man, and therefore *the Law does annex a Condition in Law to every ſuch Gift* and Grant, that if ſuch Body Politick or Incorporate be diſſolved, that the Donor or Grantor ſhall re-enter; for that the Cauſe of the Gift or Grant fails, but no ſuch Condition is annexed to the Eſtate in Fee-ſimple veſted in any Man in his natural Capacity, but in Caſe where the Donor or Feeoffer reſerves to him a Tenure, and then the Law doth imply a Condition in Law by way of Eſcheat. Co. Litt. 13. b.

8. The *Biſhop of R. brought Annuity againſt the Dean and Chapter of R.* and declared of an Annuity *by Preſcription from the Prior of St. Andrew's* of R. which Priory was *diſſolved the* 28 *H.* 8. *and* 31 *H.* 8. and *their Poſſeſſions were committed by the King to the Dean and Chapter of R.* Anderſon ſaid, the Annuity does not remain; for an Annuity charges the Party, and not the Poſſeſſion, and therefore when the Corporation is diſſolved, which is the Perſon, the Annuity is gone; Walmeſly ſaid, that in 2 H. 6. 9. it is ſaid there, if a Priory be charged with an Annuity, the Annuity ſhall continue although it be changed to an Abby. Anderſon ſaid, that is true, for there *Corporation* is *changed* only, but here it is *diſſolved*; Williams ſaid, that is ſaved by the 31 H. 8. for Annuities are expreſſed in the Saving. But Anderſon anſwer'd, that this is an Annuity, or Rent with which the Land is charged. Beaumond ſaid, that if it be any Thing wherewith the Land is charged it is ſaved, but the Perſon is only charged with this Annuity. Walmeſly ſaid, that the 21 H. 7. is, that an Annuity out of a Parſonage is not a mere Perſonal Charge, but charges the Parſon only in reſpect of the Land; and the Court would conſider on the Caſe. Ow. 73. Paſch. 38 Eliz. C. B. Rocheſter (Biſhop's) Caſe.

9. If *Lands are given to a Corporation*, and their Succeſſors, and the Corporation is diſſolv'd, the *Donor, or his Heirs, ſhall have back the Lands again*; for the ſame is a Condition in Law annexed to the Eſtate, and in ſuch Caſe no Writ of Eſcheat lies, yet the Land is in him in the Nature of an Eſcheat; Per Cur. Godb. 211. pl. 301. Mich. 11 Jac. C. B. in Caſe of the Dean and Chapter of Windſor v. Webb.

10. A *Preſcription* was laid *in an Abbot and Covent to be diſcharged of Tithes*, and it appeared, that the Body Corporate was diſſolved, becauſe all the Monks were dead, and the Abbot alſo, and the *Lands came to Laymen.* It was adjudged, that *they ſhall pay Tithes in kind*, becauſe the Preſcription was determined by the Lands not continuing in the Hands of the Abbot and Covent; For a Lay-Man cannot preſcribe in Non Decimando. Godb. 211. pl. 301. Mich. 11 Jac. C. B. The Dean and Canons of Windſor v. Webb.

Skin. 310, 311. in S. C.

11. Holt Ch. J. ſaid, that a *final Judgment for Seiſure of a Corporation* would not, as he thought, be ineffectual, as is proved by a Judgment for Seiſure Quouſque &c. in Caſe of Non-appearance, but the Liberties of a Corporation may be ſeiſed, or ſurrendred, (as in the Dean and Chapter of Norwich's Caſe 3 Rep.) and yet no Seiſure or Surrender of the Corporation itſelf; the Offices and the Power of chuſing others may be ſeiſed into the King's Hands, though he cannot exerciſe them, and he may regrant them. If a *Corporation to a particular Purpoſe* be *diveſted of all its Powers and Liberties, it is gone, as in Caſe of a Charity*; *But for any other Corporation, they have Power to make By-Laws, and govern the Place, though they have their Liberties ſeiſed*; *for they continue a Corporation, and may act as ſuch*, as in the Dean and Chapter of Norwich's Caſe, that they were uſeful ſtill as *Aſſiſtant to the Biſhop.* It is not the Privilege of the Corporation to make By-Laws, but it is eſſential to its being, and Part of the Conſtitution. Show. 280, 281. Mich. 3 W. & M. in Caſe of The King v. Mayor of London.

(I) *What* Thing *diſſolves* the Corporation.

1. IF a Corporation be made of Con-freres and Siſters, and after all the Siſters are dead, all Grants and Acts made by the Con-freres after are void; for when the Siſters are dead, this is not any perfect Corporation. M. 27. El. B. R. in the Caſe between Serjeant *Lovelace and Manwood* it is there cited to be ſo.

2. If the King makes a Corporation; conſiſting of 12 Men, to continue always in Succeſſion, and when any of them die, the others may chuſe another in his Place; If 3 or 4 of them die, yet all Acts done by the reſt ſhall be ſufficient, for this is not like to the aforeſaid Caſe. M. 37. El. B. R. per Curiam.

3. Though a *Dean and Chapter depart with all their Poſſeſſions*, yet for Neceſſity the Corporation remains as well to aſſiſt the Biſhop in his Function, as to give their Aſſent to the Eſtates &c. which he ſhall make &c. of his Temporalties, and ſo long as the Biſhoprick remains, they being his Chapter and Councel, they may well remain, though they have no Poſſeſſions, and they ſhall be now (as they were at firſt) without any Poſſeſſions; and namely, when the Biſhoprick may conſiſt wholly of Spiritualty. 3 Rep. 75. b. cites it as ſaid by Stouſe, 10 E. 31. b. in the Caſe of the Biſhop of Norwich, and 25 Aſſ. pl. 8. per Fiſher.

Tho' they grant away all their Lands, yet they have *Stallanum in Choro & Locum in Capitulo*; Per Whitlock, to which Jones agreed, and ſaid, that there is no Neceſſity of Lands, being annex'd to the Corporation, for there were Dean and Chapters before any Lands were given to them, and though they grant them away, yet the Corporation remains; and to this Doderidge agreed, and thence concluded, that *Dean and Chapter cannot deſtory themſelves*; For thereby the Biſhop will loſe his Counſels and without them he can make no Grant, and great Inconvenience would follow to the Diſcipline of the Church; and therefore *without the Biſhop they cannot diſſolve themſelves*; to all which Hide Ch. Juſtice agreed for the ſame Reaſons. Palm. 500. 501. &c. Hill. 3 Car. B. R. in Caſe of Hayward v. Fulcher. —— Jo. 168. S. C.

4. If the *Corps of a Prebend be a Manor, and nothing more* and the *Manor is recovered* from him *by Title paramount*, yet his Corporation remains; For he has Stallum in Choro, ſii Vocem in Capitulo, and he is a Prebendary, though he has Poſſeſſions. 3 Rep. 756. cites 15 Aſſ. 10.

5. If a Man is *Patron of a Vicarage* which voids, and he *preſents to it by the Name of Parſonage*, by this the Corporation of Vicarage is chang'd into Parſonage. Br. Corporations, pl. 85. cites 11 H. 6. 18, 19.

6. The *Creation of a new Corporation after the Determination of the old one makes another Body*, ſo that Rent Charges and Annuities payable to the old Corporation are extinct by the Death of all the Members, as Monks &c. Br. Mortmain, pl. 1. cites 20 H. 6. 7.

7. If the *Abbot and all the Monks die*, the Corporation is diſſolv'd, and the *Land ſhall Eſcheat*. Br. Corporations, pl. 78. cites 20 H. 6. 7. 8.

8. If the *Maſter and Confreres* of a College *are all dead*, the Corporation is determined. Thel. Dig. 20. Lib. 1. cap. 22. S. 20. cites Trin. 11 E. 4. 4.

9. And *ſo* it is of an *Abbot and Covent*. Thel. Dig. 20. Lib. 1. cap. 22. S. 20. cites Trin. 11 E. 4. 4.

10. *But if* the *Abbot be alive, and the Covent all dead*, the Corporation is not determined, per Catesby; For he may Profeſs others &c. Thel. Dig. 20. Lib. 1. cap. 22. S. 20. cites Trin. 11 E. 4. 4.

Br. N. C. pl. 38. cites S. C. —— 3 Rep. 75. b. cites S. C. and ſays, that without Queſtion this is good Law, if they were the Chapter to a Biſhop.

11. *But if they ſell all the Lands and the Abbey*, yet the Corporation remains, per Fitzherbert; But Brook makes a Quære, *of what* he ſhall be Abbot; For there is neither Church nor Monaſtery; and makes a Quære, if *the Abbot dies, if they may Chuſe another*, the Houſe being diſſolved; Monks and Canon are capable of Spiritualties as to be Vicar, Executor &c. Br. Corporations, pl. 78. cites 32 H. 8. and Hill. 3. H. 6. 23.

12. A Corporation was founded by the Name of Brothers and Siſters, and *all the Siſter are dead*, and the Brothers make Leaſe, and held void, for then it was no Corporation. D. 282. b. Marg. pl 27. cites it as in the Time of Queen Eliz. Manwood v. Lovelace.

13. The *Dean and Chapter of Wells, by expreſs words, grant and ſurrender the Deanry of Wells &c.* yet this was not thought ſure till the grant and ſurrender was eſtabliſhed by Act of Parliament, and tho' all Biſhopricks were of the Foundation of the Kings of England, and therefore in ancient Time were Donative, and given by the Kings, as appears in 17 E. 3. 40. and by the Statute 25 E. 3. de Proviſionibus, yet afterwards (as appears by the ſaid Book and the ſaid Act) the Biſhopricks became by the Grants of the Kings eligible by their Chapter, and therefore if by the ſurrender of the Dean and Chapter their Corporation ſhall be diſſolv'd, this will introduce 3 Inconveniences; 1ſt. To the Biſhop concerning his Aſſiſtance in his Epiſcopal Function. 2dly, To the Biſhop and others touching the Confirmation of his Grants. 3dly, To all the Church in General. For how can there be a Biſhop choſen in ſuch Caſes? 3 Rep. 75. b. 76. a. cites D. 273. pl. 35, 36 &c. 10 Eliz. [Walrond v. Pollard.]

Br. Mortmain pl. 1. cites 20 H. 6. 7.

14. By *the Death of all the natural Perſons* of which the Corporation conſiſts, it is diſſolved. And. 210. pl. 238. Hill. 29 Eliz. in Caſe of Marriot v. Maſcal.

15. *H. 8. tranſlated the Abbot and Peior* of Norwich by his Letters Patents, *and created them by the Name of Dean and Chapter, who ſurrendred their Poſſeſſions to Ed. 6.* and *afterwards Ed. 6. incorporated them by the Name of Decani & Capituli ex Fundatione Ed. 6.* And afterwards he *granted their Poſſeſſions to them by the Name of Dean and Chapter, Sanctæ individiæ Trinitat' Norf' omitting* theſe Words *(ex Fundatione Ed. 6.)* It was adjudged in this Caſe. 1ſt, That all Tranſlations made by H. 8. of Prior and Covent, unto Dean and Chapters, were good by the Statute of 25 H. 8. 2dly, Reſolv'd, that by the Surrender made to Ed. 6. the Corporation of Dean and Chapter was not gone; for altho' they departed with their Poſſeſſions, yet for Neceſſity the Corporation did remain, for their Aſſiſtance of the Biſhop. 3dly, Admitting their ancient Corporation was ſurrendred, and the new Corporation made by Ed. 6. was good, and that the Words omitted, viz. Ex Fundatione Ed. 6 were material, yet the Grant made to them was good, notwithſtanding this Miſnoſmer, by the Statute of 1 Ed. 6. cap. 8. of Confirmations. Hughs's Abr. 967. pl. 1. tit. Founder and Foundation cites 3 Rep. 74. [Mich. 40 & 41 Eliz.] Norwich Dean and Chapter's Caſe.

16. If a *Prior and Covent* be *tranſlated* concurrentibus iis quæ in Jure requiruntur *to an Abbot and Covent, or* to a *Dean and Chapter*, theſe tho' the Name be changed, yet the Body was never diſſolv'd, but in Effect it remaineth ſtill. Co. Litt. 102 b.

17. *Dean*

17. *Dean and Chapter* of N. incorporated *grant and ſurrender totam Eccleſiam ſuam Cathedralem* &c. to E. 6. This does not diſſolve the the Corporation. Palm. 491, 492. 501, 502, 503. Hill 3 Car. B. R. Hayward v. Fulcher. Jo. 168. S. C. & S. P

18. If a *Corporation*, that hath been by *Preſcription*, *accepts a new Charter*, *wherein ſome Alteration is of that Name*, *and* likewiſe *of the Method in the governing Part*, yet their Power to remove, and other Franchiſes which they had Time out of Mind, do continue, per Cur. 1 Vent. 355. Trin. 33 Car. 2. B R. in Haddock's Caſe.

19. A *Corpiration* may be diſſolved; For it *is created upon a Truſt*, *and if that be broken it is forfeited*, but a Judgment of Seiſure cannot be proper in ſuch a Caſe; for if it be diſſolved, to what Purpoſe ſhould it be ſeis'd? Per Cur. 4 Mod 58. Mich. 3 W. & M. in B. R. in Sir James Smith's Caſe. S. P adjudged. 2 Show. 278. in Caſe of Quo Warranto v City of London.

20. If a Corporation may be ſeiſed *Nomine Diſtrictionis*, or otherwiſe, it is diſſolved; for when it is *merged* in the Crown the King may make a new one, but cannot reſtore the old; a Corporation *is* ſomething beſides Franchiſes, for it is a Capacity to hold as a natural Body, and tho it may *ceaſe to be in Actu Exercito*, yet it may be *Actu Signato*. Neither does a Seiſure of Office diſſolve one; for on making a Corporation, the King may reſerve the naming of Officers to himſelf, and ſuſpend it for a Time, per Eyre J. 12 Mod. 18. Hill. 3 & 4 W. & M. in Caſe of the King v. the Mayor of London.

21. It was a Quære, whether a Corporation could be diſſolved, but ſure it may; it is ſuch a Franchiſe as may be forfeited; but a Judgment of *Seiſure is no proper Judgment* to diſſolve a Corporation; per Holt Ch. J. 12 Mod. 18. Hill. 3 W. & M. in Caſe of the King v. the Mayor of London.

22. By a *Surrender of Liberties* and Privileges the Corporation is not diſſolved; Per Holt Ch. J. 12 Mod. 19. cites 3 Rep. Dean and Chapter of Norwich's Caſe, and Jo. 166.

23. Agreed, if a Corporation were made *to a particular Purpoſe* and they deveſt themſelves of all Right, ſo that they *cannot anſwer the End of their Inſtitution*, it is thereby diſſolved; As in the Caſe of a private Corporation for *Charity*, before the reſtraining Statute; but if the End of a Corporation remain'd, as in a Borough, to *make By-Laws* and govern it, the Corporation remains ſtill, and the making of By-Laws is no Franchiſe, but part of the Conſtitution; Per Holt Ch. J. 12 Mod. 19. Hill. 3 & 4 W. & M. in Sir J. Smith's Caſe. Show. 280. The King v. the Mayor of London, S. C. & S. P. by Holt Ch J.

24. A Body Politick, to which a Truſt is annexed, and *Male Adminiſtration* of it is Cauſe of Forfeiture, and it may be diſſolved; and for this was cited the *Statute of Quo Warranto*, where if the Corporation does *not appear upon Summons*, the Franchiſe ſhall be ſeiſed into the King's Hands *Nomine Diſtrictionis*, and if it does *not come during the Eyre* it was loſt for ever. Skin. 310. Hill. 3 W. & M. B. R. The King v. the City of London.

25. By Parker Ch. J. if a *Mayor is not choſen at the Time preſcribed by the Charter and* there is *no Proviſion* in the Charter *for the Old Mayor's continuing on until a New Mayor is choſen in*, the Corporation is diſſolved, and conſequently cannot proceed to a new Election; Indeed ſome are of Opinion, that this may be *cured*, *by the iſſuing out of a Writ under the Great Seal impowering them to proceed to a new Election*; but others are of Opinion, that even this will not do, and that there is *no other Remedy but to obtain a new Charter from the Crown*; But no Body ever thought, that in ſuch a Caſe, the Quondam Corporation could revive itſelf by chuſing a new Head, without ſuch a Writ under the Great Seal. 10 Mod. 346. Mich. 3 Geo. 1. B. R. Corporation of Banbury's Caſe.

26. The

26. The Queſtion was, whether by *Surrender of a Charter* the Corporation was wholly diſſolv'd, and the very Being of it deſtroy'd? 3 of the Judges held, that it was not, and compared it to the ſurrender of a Deed, that the Eſtate was not thereby ſurrendered, therefore the Corporation was ſtill ſubſiſting, and had a Capacity to take, and by the Charter of King William did retake, and it would be very inconvenient if it ſhould be otherwiſe; that is if they could give up more by a Surrender than they can take by a Regrant. In the great **Caſe of the City of London**, ſeveral learned Men were of Opinion, that a Surrender did not deſtroy the Being of a Corporation; this appears by the Surrender of Abbeys in the Reign of H. 8. for it was not thought proper at that time to reſt purely on theſe Surrenders, but to have them confirmed by Act of Parliament. One of the Judges held, that tho' barely by the Surrender of this Charter, the Corporation was not diſſolved, yet there were other Words in it, by which they gave up all the Liberties and Privileges which they then enjoyed, by which Words the very Being of this Corporation was diſſolved; bnt this being a Caſe of great Weight, it was adjourned farther to be argued. 8 Mod. 361, 362. Paſch. 11 Geo. The King v. Grey.

(I. 2) Cuſtoms. Confirmed. How.

1. NOTE, by Keeling J. that ſeveral of the ancient Statutes that were made for private Cities, have *only a Memorandum upon the Roll*, viz. *that all Cuſtoms* &c. *are confirmed*, and the Parties have this *exemplified, with expreſs Mention of the particular Cuſtoms*, and in particular ſome of the ancient Statutes which confirmed the Cuſtoms of London are ſo, and then be the Cuſtoms reaſonable or unreaſonable, when they are ſo confirmed they are good, and he ſaid he had viewed Rolls to be ſo. Sid. 251. Paſch. 17 Car. 2. B. R. in Caſe of Wilkinſon v. Bolton.

(I. 3) Of taking or refuſing a New Charter, and the Effects thereof.

S.C. cited Mo. 581. as held in the Exchequer-Chamber by Portington, in the Abbot of St. Bartholomew's Caſe

1. IF *Bailiffs* of a Vill *have Liberties* by Charter of the King, and after the *King makes them Sheriffs*, and that they ſhall implead and be impleaded by the ſame Name, yet their Liberties remain good to them, per Portington, quod fuit conceſſum; and by him the Grant is good without Allowance; But per Paſton and June, the Grant is not good without ſhewing Allowance. Br. Patents, pl. 27. cites 14 H. 6. 12.

that the Sheriffs ſhall hold the Liberties which were given to the Bailiffs, and cites 21 E. 4. 55. the Caſe

Caſe of Norwich, in which it was held, that all Grants made Inhabitantibus ac Probis Hominibus aut Civibus ſhall be enjoy'd by the Corporation of the ſame Place, when they are afterwards incorporated by the name of the Mayor and Commonalty, or otherwiſe; And cited alſo D. 279. [b. pl. 10. Mich.] 10 & 11 Eliz. where thoſe of York preſcrib'd as Mayor, Bayliffs, and Citizens to take and ſeiſe as forfeited Goods there foreign bought, and foreign ſold till 1 R. 2. at which Time they were incorporated by the Name of Mayor, Sheriffs, and Citizens, and then they claim'd this Cuſtom as Mayor, Bailiffs, and Citizens, and held good; And the whole Court and Coke Attorney agreed, that in the laſt Name of Corporation all ſhall be enjoy'd, which was gained by Preſcription or Grant in the precedent Name.

2. The Corporation of the Bailiffs and Commonalty of Dale has Land and Franchiſes; the *King changes their Name*, and they are incorporated by the Name of the Mayor, Bayliffs, and Commonalty of Dale; The Land and the Franchiſes which they had, remain with this new Corporation, for the new Patent of Incorporation recites their former Names, and changes it as above; and this new Corporation continues compoſed of the ſame Perſons and Place, which conſtituted the old one. Jenk. 99. pl. 94.

By the Alteration or * *Change of Name* a Corporation does not *loſe its Franchiſes.* 4 Rep. 87. Lutterel's Caſe. —Saund. 344. in Caſe of Mellor v. Spateman. —— Per Tirrel J. Cart. 118. cites 5 Rep. 82. Snelling's Caſe. —Agreed per Cur. Mo. 581.—Raym 439.—Nor does it *determine an Annuity* granted before the Change of the Name. 2 And. 107 in Caſe of Biſhop of Rocheſter v. Dean and Chapter of Rocheſter.

* S. P. and ſo of the *Method of the governing Part*, yet their Power to remove, and other Franchiſes which they had Time out of Mind &c. do continue. Vent. 355. Haddock's Caſe.——— It was agreed, that where a *Corporation* is *by Name of Commonalty*, and after *by another Grant they have Bailiffs*, yet by this Change they *ſhall not be diſcharged of Covenants, Annuities* &c. to which they were bound before, and by the ſame Reaſon it ſeems that *they ſhall retain the Lands and Poſſeſſions which they had before.* Br. Corporations, pl. 3. cites 2. H 6. 9.

3. If a *Patent* of certain Lands are made to *J. S.* and J. S. is afterwards *confirmed* by the Biſhop *by the name of T. S.* notwithſtanding this Change of his Name the Land remains with T. S. But if after the Confirmation, a Patent had been made to J. S. it had been void; for Confirmation by the Biſhop is as 2d Baptiſm, and changes the Name; So in the principal Caſe, if after a new Corporation a Patent had been made to them by the Name of their old Corporation; ſuch Patent had been void. Every one is bound to know his own Name, and not the Name of another. Jenk. 100. pl. 94.

4. A Prior and Covent had been of ancient Time; the King after Time of Memory, by the Licence of the Pope and the Ordinary, had *tranſlated the Priory into a Deanry and Chapter of Men ſecular*, and granted that they ſhould be impleaded, and might implead by ſuch Name &c. It was held, that ſuch *new Corporation might ſue for the Annuity which the Prior and his Covent had by Preſcription* from Time &c. Thel. Dig. 20. Lib. 1. cap. 22. S. 23. cites 39 H. 6. 13, 14. and ſays ſee 50 E. 3. 27.

5. If a Man *recovers againſt a Vicar an Annuity*, and *before Execution the Vicarage is united to the Parſonage*, yet the Plaintiff ſhall have *Execution againſt the Parſon.* Br. Corporations, pl. 61. cites 20 E. 4. 6.

6. It was held by Brian, that if the *Bailiffs and Commonalty* of London had *granted an Annuity*, and *after they had had Mayor and Sheriffs* by Grant of the King, the *Grantee might have Action againſt them by their new Name.* Thel. Dig. 20. Lib. 1. cap. 22. S. 24. cites Trin. 20 E. 4. 6. and ſays See 21 E. 4. 59 the ſaying of Choke.

7. *But* it is a Doubt in ſuch Caſe, *how* a Man ought *to ſue Scire Facias* againſt the new Corporation *out of a Recovery had againſt the old Corporation*, as appears 2 H. 6. 9. in the Caſe of the Commonalty of Shrewſbury. Thel. Dig. 20. Lib. 1. cap. 22. S. 24.

8. Where the *Bailiffs of L. grant an Annuity to me*, and *after are made Mayor and Sheriffs*, I may have Action of this againſt the new Corporation. Br. Corporations, pl. 61. cites 20 Ed. 4. 6.

9. If a *Prior* be *bound in an Obligation*, and the King alters the Corporation, and makes him an Abbot, yet the firſt ſuit ſhall remain. Br. Abbe, pl. 13. cites. 3 H 7. 11. and 5 H. 7. 24. Per Brian.

10. It was adjudg'd, where *one Corporation is duly united* and annexed *to another* Corporation, that *the Corporation to which* the Union is made *ſhall have Action* upon Cauſe of Action accrued *of a Thing which was of the Poſſeſſion or Right of the other Corporation.* Thel. Dig. 20. Lib. 1. cap. 22. S. 27. cites 11 H. 7. 8. & 26. And that ſo agrees Trin. 50 E. 3. 27.

11. If a Corporation grants the Office of Town Clerk, or Recorder, and after *ſurrenders their Patent, and takes a new one* by a new Name, all the Offices are determin'd. Hutt. 87. Hill. 2 Car. in Sir Charles Howard's Caſe.

12. *Debt* was due to an old Corporation, and they were incorporated by a *new Name* and brought Action in their new Name, and recover'd. 3 Lev. 237. Mich. 1 Jac. 2. C. B. Mayor Caſe of Scarborough v. Butler.

Ld. Raym. Rep. 32. S. C. and S. P. per Holt Ch. J. and G. Eyre.

13. Where a Corporation takes a *new Charter* concerning antient Liberties, they may uſe it either by way of Grant or of Confirmation; Per Holt Ch. J. and Eyre J. Cumb. 316. Hill. 6 W. 3. B. R. in Caſe of the King v. Larwood.

J.——The new Charter does not *merge* or extinguiſh any of the *ancient Privileges.*——Raym. 439. Paſch. 33 Car. 2. B. R. Haddock's Caſe.——Vent. 355. S. C.——And if it be only as a Confirmation, the antient Cuſtoms, before the new Charter, may be *pleaded to have been Time out of Mind.* See Carth. 228. Vaughan v. Lewis.

14. If a Corporation *refuſes a new Charter*, it is then void; But when they accept, and put it in Execution, then it is good; Per Holt Ch. J. Cumb. 316. Hill. 6 W. 3. B. R. in Caſe of the King v. Larwood.

S. P. in a Quo Warranto held per Cur. accordingly. 12 Mod. 253. Mich. 10 W. 3. in Caſe of Piper v. Dennis.

15. Plaintiff brought Caſe for a falſe Return to a Mandamus, commanding him to ſwear Harris to be Mayor of Dartmouth, and a peremptory Mandamus moved for. It was reſolved by the Court, that if there be an *old Charter ſurrendered*, but *Surrender not enrolled*, and a new Charter in Conſideration of the Surrender granted, that the *ſecond Charter* is void, becauſe they act under a void Charter; But otherwiſe if it be the *ſame Members* in the old Charter, becauſe then they act by their firſt Charter, which is ſtill good. So, if in the firſt Caſe, they had *given a Bond*, and put the Seal of the new Corporation to it, it would be void, as was adjudged in the Caſe of **Bath and Wells**; But if the Members of the old Charter had gone to *Election*, and ſome by Colour of the new Charter had voted with them againſt their Will, there a Choice by Majority of the old Charter, with ſome mention'd in the new, is good. 12 Mod. 247. Mich. 10 W. 3. Bully v. Palmer.

16. Where thoſe that were *Members under an old Charter* happen to be *the only acting Perſons in a Matter relating to the Corporation*, they ſhall be *deem'd to act by Virtue of the ancient and true Right*, but if commix'd with others that were only Members under the new Charter tho' the old Members were the Majority, yet then muſt be taken to act by Virtue of the new Charter, and then what they did was void. 1 Salk. 191. pl. 1. Trin. 11 W. 3. B. R. Reſolv'd in Caſe of Butler v. Palmer.

17. Where the *new Charter alters the Conſtitution* of the Corporation, and new models it, there *they ſhall loſe their old Name*; otherwiſe, *if the Conſtitution as to all the integral Parts of it remains the ſame, tho' the new Charter gives them a new Name, the old one remains*; for the Purpoſe if the Mayor be added, or a Mayor and Maſters are made Mayor and Aldermen, or an Abbot or Covent, a Dean and Chapter, there they loſe their old Name, becauſe new integral Parts of the Corporation are added; But if the Inhabitants of G. were incorporated by the Name of Bailiffs, Burgeſſes, and Commonalty of G. and then a new Charter is granted to them, that they ſhall be called by the Name of Bailiffs, Burgeſſes,

geſſes, and Commonalty of G. yet they may uſe the firſt Name, becauſe the Town is the ſame, and the old Conſtitution remains; Per Holt Ch. J. 2 Ld. Raym. Rep. 1239. Hill. 4 Ann. in Caſe of the Queen v. Ipſwich Bailiffs &c.

(I. 4) New Charter. Pleadings.

1. IN Writ of Covenant the Caſe was, that the *Commonalty of S. made Compoſition* with the Abbot of W. and after they *by another Grant had Bailiffs*, and by the beſt Opinion now the Suit ſhall be againſt *the Bailiffs and Commonalty*, and *not againſt the Commonalty only according to their Specialty*, for *by Matter Ex poſt facto* a Man may vary from his Specialty. Br. Variance, pl. 1. cites 2 H. 6. 9.

2. A *Prior and his Predeceſſors had been ſeiſed of an Annuity Time out of Mind, and by Licence of the King, the Pope, and the Ordinary, tranſlated it into Dean and Chapter*, and the *Dean and Chapter brought Annuity, and preſcrib'd in him and his Predeceſſors, and did not ſay Deans of the ſame Place*; the *Defendant ſhew'd the Tranſlation within Time of Memory, Abſque hoc that the Dean and Chapter and his Predeceſſors Deans there have been ſeiſed Modo and Forma* &c. *and after the ſpecial Matter was enter'd in the Roll with the Traverſe, except thoſe Words, then Dean* &c. [*which*] *were omitted by Award of the Court*; And per Priſot, the *Defendant may traverſe the Preſcription generally, and give the ſpecial Matter in Evidence, and demur upon the Tranſlation given in Evidence by the Plaintiff, or plead the ſpecial Matter by Eſtoppel by the Record of the Tranſlation, and demur in Law upon the other, upon this Matter*, and ſo ſee that it is doubted here, if they may preſcribe in this Form by the Seiſin of the Prior &c. Br. Preſcription, pl. 42. cites 39 H. 6. 13. ——But ſee thereof 22 E. 4. 43, 44 and the Form of that Preſcription 7 E. 4. 32. & 20 E. 4. 6. Ibid.

3. Where a *Prior is made Abbot*, and the Corporation chang'd from a Prior into an Abbot, it was touch'd, that if *ſuch Abbot will preſcribe in Right of the Houſe*, he ought to *ſhew that the Prior and his Predeceſſors Time out of Mind* &c. and that after he was profeſs'd an Abbot, and that after the Abbot and his Succeſſors &c. have been ſeiſed &c. Br. Preſcription, pl. 70. cites 7 E. 4. 32.

(K) *What* Things a Corporation may *do without Deed.*

1. A Corporation aggregate cannot without Deed command their Bailiff to enter into certain Lands of their Leaſe for Years for a Condition broke; **for ſuch Command without Deed is void. P. 43 El. B. R. between** *Dumper and Sims* **adjudged.** Cro. E. 815. pl. 5. S. C. adjudged. ——4 Rep. 119. b. S. C. but I do not obſerve S. P.—— Vent. 48. Arg. cites S. C.

2. *Covenant*

Br. Covenant pl. 15. cites S. C.

2. *Covenant* was brought *by the Mayor and Commonalty of N. againſt the Mayor and Commonalty of D.* and *counted, that the Defendants* by their Deed had *covenanted that the Plaintiffs ſhould be quit of Murage*, Pontage, Cuſtom, *and Toll in D. of all thoſe in N. and that they of N. had taken Toll by certain of their Burgeſſes of certain of the Burgeſſes of N.* wrongfully &c. And there adjudg'd, that the *Taking of the* * *Common Servant is the Taking of the Corporation*, and ſo the Covenant broken; Quod nota; and it is not mention'd their of the Servant was Servant by Specialty under the Common Seal of the Corporation, or not. Br. Corporations, pl. 14. cites 48 E. 3. 17.

* *Contra* if it be made *by another particular Perſon* Br. Corporations pl. 74. cites 48. E. 3. 17.

3. Mayor and Commonalty cannot *diſſeiſe another unleſs the Uſe of themſelves*; contra it ſeems if one enters for them by Authority in Writing under their Common Seal, where their Entry is not lawful. Br. Corporations, pl. 24. cites 8 H. 6. 1. 14.

Arg. Mod. 18. cites 12 H. 4. 17.

4. They cannot *Licence one to take Trees* without Deed. Arg. Vent. 48. cites 9 E. 4. 39.

Jenk. 131. pl. 68. cites S. C.

5. Per Littleton, the Opinion of all the Juſtices of both Benches is, that *Aſſignment of Auditors by Corporations* is good without Deed. Br. Corporations, pl. 56. cites 12 E. 4. 9. 10.

6. *So of Juſtification by their Command.* Br. Corporations, pl. 56. cites 12 E. 4. 9. 10.

7. *So of Command of a Covent, in the Time of Vacation, to cut their Trees*, and other *Neceſſaries*. Br. Corporations, pl. 56. cites 12 E. 4. 9. 10.

8. Leaſe of *Land by an Abbot* for Years is not void by his Death, but voidable only, becauſe it *may be leaſed without Deed*, and *by Receipt of the Rent by the Succeſſor the Leaſe is good*; *But* if Abbot grants *a Villein, or Rent*, or the like, which paſſes not by Deed, and dies, there by *Death of the Abbot* the Grant *is void*. Br. Leaſes pl. 41. cites 21 E. 4, 5, 6.

9. Treſpaſs by the Maſter and Chaplains of B. of a Houſe and Cloſe broken in London; the Defendant pleaded *Licence of the Parties to come into the Houſe to talk with them*, and Pigot demurred in Law, becauſe the Licence was by Parol, and not pleaded by Deed, and therefore ill; for a Licence by a Corporation &c. ſhall be by Writing. Br. Licences &c. pl. 16. cites 21 E. 4. 15. 19.

10. Dean and Chapter may *retain and aſſign Bailiff, Receiver, or other Servant*, without Writing, per Townſend Juſtice; but Brian Ch. J. contra, and that he cannot be Servant without Writing, nor demand his Salary without Writing. Br. Corporation, pl. 47. cites 4 H. 7. 6.

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12. A Corporation cannot be *aiding to a Treſpaſs*, nor give *Warrant to do a Treſpaſs* without Writing; Quod nota. Br. Corporations, pl. 48. cites 4 H. 7. 13.

13. A *Servant may juſtify by Command* of a Body Politick without having Deed of the Commandment, per Townſend; but Brian contra, and that they *can do nothing* without Writing. Br. Corporations, pl. 49. cites 4 H. 7. 17.

Arg. Mod. 18. cites 9 E. 4. 59. —Br. Corporation, 24. 34. 14 H. 7. 1. 7 H. 7. 9.

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15. In *Treſpaſs* the Defendant ſaid, that it was the Franktenement of the Preſident and Scholars of C. and he as *Servant* to them, and *by their Command enter'd* &c. and per Keeble, he cannot be retained with a Corporation without Specialty, nor *make a Feoffment* without Specialty. Br. Corporations, pl. 50. cites 7 H 7. 9.

16. *But* of *petit Things* there needs no Writing, as *to light a Candle, make Hay, or Fire*, nor to *put Beaſts out of his Land*, per Wood; Oxenbridge contra, for thoſe Things belong to a Servant to do without Command, but *Entry* &c. ought to be by Deed; And Fairfax accordingly of the petit Things, but that Corporation cannot *have a Servant* but by Deed; And Tremail agreed with Wood of the petit Things, but ſeveral contra of the petit Things aforeſaid, by Reaſon of the Uſage, and of the great Trouble which ſhall be to the contrary, but not by the Law, therefore quære. Br. Ibid.

But for *Ordinary Employments* and Services a Corporation may appoint a Servant without Deed, as a *Cook, Butler* &c. Mod. 18.

Arg. agreed. —— Br. Corporations, pl 49. cites 4 H. 7. 17. per Townſend —— Vent. 47. Arg. cites 18 E. 4. 8. —— Br. Corporation 59. —— 3 Wms's Rep. 423. Arg. cites Pl. C. 91. b. & 2 Saund. 305.

17. One cannot appear *in Aſſiſe as Bailiff* to a Corporation without Deed. Vent. 48. Arg. cites 12 H. 7 27.

18. *Command of the Mayor to enter into Land* for the Corporation is good without Writing, *contra* of Command *of the Commonalty, Chapter* &c. *contra* it ſeems *of the Command of the Mayor and Commonalty*. Br Corporations, pl. 96. cites 16 H. 7. 2.

19. Corporation cannot *preſent a Clerk* unleſs by Writing under the Common Seal. Br. Corporations, pl. 83. cites 13 H. 8. 12.

20. *But* they may make *Attorney in Court of Record without other Writing than the Record*; for Record is a ſtrong Writing. Br. Corporations, pl. 83. cites 13 H. 8. 12.

21. *So* to *certify their Mayor in the Exchequer*; for this is enter'd of Record, and ſo is the Uſe for London at this Day. Br. Corporations, pl. 83. cites 13 H. 8. 12.

22. A Corporation cannot *do a Tort* but by their Writing under their Common Seal; Per Fitzjames Juſtice. Br. Corporation, pl. 34. cites 14 H. 8. 2. 29.

23. *All Acts which a Corporation does* ſhall be by their Name of Corporation, and by Writing, and otherwiſe ill; and yet by two Juſtices they may Preſent, and the Pleading is good, without ſaying that the Preſentment was by Writing, for the Law implies it; But two others contra. Br. Corporations, pl. 34. cites 14. H. 8. 2. 29.

24. The *Election of Dean, Maſter*, &c. and the *making of their Attorney, which are of Record*, are good without their Writing under Common Seal; but in Feoffment to the *Dean and Chapter* they *cannot take but by Letter of Attorney under Seal*; per Brook Juſtice. Br. Corporations, pl. 34. cites 14 H. 8. 2. 29.

25. Note, per Cur. that he who *diſtrains as Bailiff of a Corporation, and is not Bailiff*, may make Conuſance &c. if they agree to it, and good without Deed; And the Caſe was, that one of the Corporation diſtrain'd in Right of the Corporation, and had not their Deed; Nota. Br. Corporation, pl. 2. cites 26 H. 8. 18.

26. *Though the Law is, that a Bailiff may juſtify in Treſpaſs* as Bailiff to a Corportion without a Deed, yet it is not like to a Bailiff *in an Aſſiſe*; and it was ſaid, that a Bailiff of a Manor ſhall not have *Debt for his Salary againſt a Corporation* without a Deed. Plowd. 91. b. Trin. 3 Mar. Arg. in Aſſiſe of Freſh-Force brought in London by Pannel v. Moore.

27. If the Sheriff makes his *Warrant to a Corporation* who have return of Writs, *to arreſt* a Perſon, they may make a Bailiff without Writing by

Br. Covenant pl. 15. cites S. C.

2. *Covenant* was brought *by the Mayor and Commonalty of N. against the Mayor and Commonalty of D.* and *counted, that the Defendants* by their Deed had *covenanted that the Plaintiffs ſhould be quit of Murage*, Pontage, Cuſtom, *and Toll in D. of all thoſe in N. and that they of N. had taken Toll by certain of their Burgeſſes of certain of the Burgeſſes of N.* wrongfully &c. And there adjudg'd, that the *Taking of the* * *Common Servant is the Taking of the Corporation*, and ſo the Covenant broken; Quod nota; and it is not mention'd their of the Servant was Servant by Specialty under the Common Seal of the Corporation, or not. Br. Corporations, pl. 14. cites 48 E. 3. 17.

* *Contra* if it be made *by another particular Perſon* Br. Corporations pl. 74. cites 48. E. 3. 17.

3. Mayor and Commonalty cannot *diſſeiſe another unleſs the Uſe of themſelves*; contra it ſeems if one enters for them by Authority in Writing under their Common Seal, where their Entry is not lawful. Br. Corporations, pl. 24. cites 8 H. 6. 1. 14.

Arg. Mod. 18. cites 12 H. 4. 17.

4. They cannot *Licence one to take Trees* without Deed. Arg. Vent. 48. cites 9 E. 4. 39.

Jenk. 131. pl. 68. cites S. C.

5. Per Littleton, the Opinion of all the Juſtices of both Benches is, that *Aſſignment of Auditors by Corporations* is good without Deed. Br. Corporations, pl. 56. cites 12 E. 4. 9. 10.

6. *So of Juſtification by their Command.* Br. Corporations, pl. 56. cites 12 E. 4. 9. 10.

7. *So of Command of a Covent, in the Time of Vacation, to cut their Trees*, and other *Neceſſaries.* Br. Corporations, pl. 56. cites 12 E. 4. 9. 10.

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27. If the Sheriff makes his *Warrant to a Corporation* who have return of Writs, *to arreſt* a Perſon, they may make a Bailiff without Writing by

Parol only. Agreed by all the Juſtices in B. R. Mo. 552. pl. 744. Hill. 33. Eliz. Vaviſor's Caſe.

And ſo a *Stranger may receive a Deed to their Uſe* without Letter of Attorney. Cro. E. 862. S. C.

28. A. ſeiſed of Land *granted* 40 *l. Rent to a College.* A. ſealed his Part of the Indenture, and delivered it to one J. S. to the Uſe of the Maſter and Fellows, and for him to deliver it accordingly, but there was no Deed to ſhew their Receipt of it, and then they ſeal'd the other Part, but made *no Attorney* to deliver it; Adjudged good without a Letter of Attorney, for their ſealing the Counter-Part is a ſufficient *Agreement to the Grant.* Ow. 143. Trin. 40 Eliz. Goodrick v. Cooper.

Cro. E 862. pl. 39. S. C. adjudged.

29. If a *Reverſion is granted to* a Corporation by Deed, though they cannot *accept* of this but by Attorney, yet if they bring Waſte it is a ſufficient *Agreement* to veſt it in them; Per Walmeſly. Ow. 143. Trin. 40 Eliz. C. B. in the Caſe of Goodrick v. Cooper.

30. A Corporation aggregate of many cannot *make a Leaſe for Years* without Deed, in reſpect of the Quality of the Incorporation, but the Leſſee may aſſign it over without Deed. Co. Litt. 85. a.

31. A Man may *enfeoff* an Abbot, a Biſhop, a Parſon &c. or *any* other *ſole Body Politick, by Deed, or without* Deed, *in Free-Alms*; but if Lands be given to a Dean and Chapter, or any other Corporation aggregate of many, there the Gift muſt be by Deed. Co. Litt. 94. b.

S. C. cited Arg. 3. Wms's Rep. 426. Mich. 1712. in Domo Proc.

32. Where a *Corporation has an Eſtate pur auter Vie*, if *they attorn to the Reverſioner*, it muſt be by Deed; For though the Grantee does not claim in by thoſe that attorn, and that an Attornment is no more than Conſent, yet in Pleading the Deed of Attornment ought to be ſhewn; For in ſuch Caſe a Deed is requiſite Ex inſtitutione Legis; But when a Deed is requiſite Ex Proviſione Hominis, there the Proviſion of Man ſhall not change the Judgment of Law in ſuch Caſe. 6 Rep. 38. b. Paſch. 3 Jac. C. B. in Bellamy's Caſe.

33. Church-Wardens were incorporated by Act of Parliament, and afterwards the *Queen demiſed a Rectory* to them for 21 Years, and *afterwards* by Letters Patents, *reciting the firſt Grant*, and that the Church-Wardens Modo habentes & ad præſens poſſidentes had ſurrendered all their Eſtate for Years &c. ſhe *in Conſideration of* the ſaid *Surrender, and* for *a Fine of* 20 *l.* &c. *demiſed* the ſaid Rectory *to them for* 50 *Years.* It was adjudged, that there need not be any actual Surrender of the firſt Leaſe, becauſe the Words in the ſecond Leaſe, (viz.) Modo habentes & ad præſens poſſidentes import that they were then poſſeſſed of the firſt Leaſe, and their *Acceptance of the new Leaſe* for 50 Years *was, in Judgment of Law, a Surrender of the firſt Leaſe for* 21 *Years*, and ſhall precede it, and that a *Corporation may make a Surrender of their Term by an Act in Law, without Writing, though not an expreſs Surrender without Writing.* And the Reporter adds, that he had ſeen ſeveral other Letters Patents made on the like Conſideration of a *Surrender, with the Words (Modo habens & poſſidens)* in none of which there was ever any actual Surrender made. 10 Rep. 66. b. Trin. 11 Jac. in Scacc. Church-Wardens of St. Saviour's Caſe.

S. C. cited Arg. 2. Saund. 305.

34. *Treſpaſs for carrying away divers Loads of Wheat*; The Defendant *juſtified under the Dean and Chapter of N. that they were ſeiſed in Fee of Rectory of H. wherein the ſaid Corn was growing, and ſever'd from the* 9 *Parts*, which he took by their Command. The Plaintiff replies, that the Dean &c. were ſeiſed, and demiſed the Rectory to G. for 99 Years, which by mean Aſſignments came to the Plaintiff. The Defendant rejoin'd, that one of the Meſne Aſſignees by Feoffment convey'd the ſaid Rectory to one W. W. whereupon the Dean &c. entred into the ſaid Rectory as a Forfeiture, and that the Corn being ſever'd and ſet out for Tithes, he took them by Command of the ſaid Dean &c. Exception was taken, becauſe he pleaded an Entry after the Forfeiture, and *did not ſhew a Deed of Command to enter*, Sed non allocatur; For it is *not pleaded*

ed that any entred by their Command after the Forfeiture, but that the Dean &c. themſelves entred, which ſhall be intended a ſufficient Entry, and all neceſſary Circumſtances ſhall be implied; Beſides, *the Feoffment is* not only a Forfeiture, but *a Diſſeiſin, being by Tenant for Years, and then every one may enter on their Behalf* where they have a Right of Entry. Cro. Car. 169, 170. pl. 16. Mich. 5 Car. B. R. Edgar v. Sorrell.

35. In *Treſpaſs for taking* away *a Ship*, the Defendant *juſtified under the Patent, whereby the Canary Company is incorporated, that none but ſuch and ſuch ſhould trade thither, on Pain of forfeiting their Ships and Goods* &c. and ſaid, that the Defendant did trade thither. Plaintiff demurr'd, becauſe he did *not ſhew the Deed whereby the Company was authoriz'd* to ſeize the Goods. Twiſden thought they could not ſeize without Deed, any more than they could enter for Condition broken without Deed; but adjornatur to be argued whether this was a Monopoly or not. Mod. 18. pl. 48. Mich. 21 Car. 2. B. R. Horn v. Ivy.

A Corporation *aggregate cannot*, without Deed, *impower any third Perſon to ſeize Goods for their Uſe as forfeited.* Sid. 441. pl. 12. Hill. 21 & 22 Car. 2. B. R. Horne v. Ivy. —— Vent. 47. S. C. Curia adviſare vult, but the Reporter cites Sid 441. that Judgment was given for the Plaintiff. ——2 Keb. 567. pl. 72. S. C. adjornatur. —— Ibid 604. pl. 33. S. C. & S. P. agreed and Judgment for the Plaintiff. — S. C. cited 3 Wms's Rep. 424. Mich. 1717. Arg. and ſays, that the Books are, that the Seizing of Goods for the Uſe of a Corporation is an extraordinary, and not a Common Service; And ſays, that this ſhews that a Corporation can no more give an Authority as to perſonal Things, than as to any real Eſtate.

36. In *Debt on a Leaſe for Tithes*, rendring 50 *l.* a Year, the Defendant *pleaded, that before any of the Rent incurr'd he aſſign'd over* the ſaid Leaſe and Tithes, *of which the Plaintiff had Notice, and did receive the Rent before due from the Aſſignee.* It was inſiſted, that this Acceptance ſhall not bind the Corporation, becauſe they can do nothing but by Attorney or Bailiff made under their Common Seal, and cannot by themſelves take Notice of this Aſſignment. Twiſden J. ſaid, that this Point was reſolv'd in Magdalen College's Caſe, 11 Rep. 79. a. to be a void Acceptance. Adjornatur. Raym. 194, 195. Mich. 22 Car. 2. B. R. Windſor (Dean and Chapter) v. Gover [als. Gower.]

Lev. 306. S. C. ſays, the Court ſaid Nothing to this Point; but gave Judgment for the Plaintiff upon another Point for the Inſenſibility. —— Vent. 98, 99. S. C. adjornatur. —— 2 Saund. 302. S. C. and Ibid. 306. ſays, he thinks that Judgment was given upon that other Point, becauſe they would not determine the Matter in Law.

37. *Conuſance, as Bailiff of a Corporation, without ſhewing a Precept in Writing*, was adjudg'd good. 3 Lev. 107. Mich. 34 Car. 2. C. B. Manby v. Long.

S. C. cited Arg. 3 Wms's Rep. 423.

38. In *Ejectment*, the Plaintiff declared *on a Demiſe* made by a Corporation, but did *not ſet forth that it was by Deed*, or under the Seal of the Corporation, and upon Not Guilty the Plaintiff had a Verdict, and Judgment, and this was alleged for Error; But Judgment was affirmed, for Declarations in Ejectment are grounded now on Fictions only, ſo that in ſuch Caſe the Law is altered from what it was formerly. Carth. 390. Mich. 8 W. 3. B. R. Patrick v. Ball.

39. Where a Corporation has a Head (as a Mayor) he may command a Thing *in Perſon*; but a Corporation aggregate, which has no Head, muſt give their Authority *under the Seal* of the Corporation. 2 Lutw. 1497. Hill. 12 W. 3. C. B. Randle v. Dean, cites 16 H. 7. 2. b.

A Corporation aggregate may *appoint a Bailiff to diſtrain* without Deed or Warrant, as well as a *Cook or Butler*; for it neither veſts nor diveſts any ſort of Intereſt in or out of the Corporation. 1 Salk. 191. cites it as ſo held between Cary and Matthews in Cam. Scacc. —S. C. cited Arg. 3 Wms's Rep. 425. Mich. 1717. in Domo Proc'.

40. Though

3 Salk. 103. S. C. accordingly. ——6 Mod. 25. S. C. but S. P. does not appear.

40. Though a Corporation cannot do an *Act in Pais* without their *Common Seal*, yet they may do no Act upon Record, becauſe they are eſtopped by the Record to ſay it is not their Act. 1 Salk. 192. pl. 4. Hill. 1 Ann. B. R. The Mayor of Thetford's Caſe.

41. A Corporation made a *Contract for letting the Market* at Bridport in Dorſet, tho' not in Writing, being from Year to Year, and held to be good. At Dorcheſter Aſſiſes 1749. Coram King Ch. J.

(K. 2) Of Executing Deeds by a Corporation.

1. IF Abbot and Covent make a Deed, and do *not deliver it but by Attorney*, this *Attorney ought to have Letter of Attorney of them to deliver it*; Per Choke and Jenny. Br. Corporations, pl. 72. cites 9 E. 4. 39.

2. Corporation may *make a Deed out of their Houſe*, for all may come out to another Place &c. *but if* it be *dated in the Chapter Houſe* it cannot be [delivered] in another Place. Br. Corporations, pl. 72. cites 9 Ed. 4. 39.

3. The Abbot and Covent may make a Deed *in another County than where the Abbey is*, and this by the beſt Opinion of the Court. Br. Lieu, pl. 63. cites 21 E. 4. 26.

2 Le. 97. pl. 119. S. C. agreed accordingly by the whole Court. —— S. P. Vent. 257. Paſch. 26 Car. 2. B. R. Anon. and held to be a good Leaſe; For though the putting of a Seal of a Corporation aggregate to a Deed carries with it a Delivery, yet the Letter of Attorney to deliver it upon the Land ſhall ſuſpend the Operations of it till then.

4. Dean and Chapter *made a Leaſe*, *rendring Rents*, and for Default of Payment to re-enter. The Rent was not paid, whereupon they *made a Leaſe* to the Plaintiff, *and in their Chapter-Houſe put their Seal to it, and made a Letter of Attorney to J. S. enter, and deliver the Deed upon the Land.* It was objected, that the 2d Leaſe not good, becauſe the Dean and Chapter let it in the Chapter-Houſe by ſetting their Seal to it, which made it a perfect Deed, and ſo there could be no other Delivery; and therefore the *firſt Leſſee continuing in Poſſeſſion*, and they out of Poſſeſſion the Leaſe was void, and the Delivery by the Attorney, it having a former Delivery, is void; ſed non allocatur; For there is no other Means for a Corporation to make a Leaſe but this. Cro. E. 197. pl. 3. Hill. 32 Eliz. B. R. Willis v. Jermin.

5. If a *Perſon pretending to be Mayor* of a Corporation, puts the Corporation Seal to a Deed, yet it is not by that the Deed of the Corporation; Per Holt Ch. J. 12 Mod. 423. Mich. 12 W. 3.

(K. 3) What Actions or Remedy the Succeſſor ſhall have for Things done in the Time of his Predeceſſor &c.

1. IF a *Diſſeiſin* be made *to a Dean*, or an *erroneous Judgment*, or *falſe Oath*, and he dies, his *Succeſſor ſhall not have Aſſiſe of Novel Diſſeiſin, but a Writ of Entry ſur Diſſeiſin in the Quibus*, or a Writ of *Error*, or *Attaint*, and name him, becauſe he was not Party to the Judgment. D 86. b. pl. 97. Paſch. 7 E. 6. in the New Serjeant's Caſe. Alias, Briſtol (Dean and Chapter) v. Clerk.

2. *But* where the *Dean* is *ſeiſed in Common with the Chapter*, that tho' he dies, yet his *Succeſſor, and the Chapter together, ſhall have Aſſiſe of Novel Diſſeiſin. or Error, or Attaint, without naming the Name of the Dean in certain*, becauſe the Dean does not die, but continues for ever. Ibid.

3. An Abbot may have a Writ of *Quod permittat of a Diſſeiſin made to his Predeceſſor*, and ſhall make Mention of the Diſſeiſin in hir Writ. F. N. B. 123 (H) And ſo may a Parſon. F. N. B. 123. (L)

4. When a *Dean, Biſhop*, Prebendary, Abbot, Prior, Maſter of an Hoſpital, *alien the Lands* which they have in Right of their Houſe &c. *without the Aſſent* &c. the Succeſſor may have a *Writ De ſine aſſenſu Capituli*, and it may be *in the Per, Cui or Poſt*. F. N. B. 194 (I) a *Prebendary* may have a *Juris Utrum*. F. N. B. 194. (M)

5. A Maſter of an Hoſpital may have Trepaſs for *Goods taken away in the Time of his Predeceſſors*. F. N. B. 89. (G.)

And ſo of an Abbot or Prior. Ibid (H) — But a *Replevin* will lie in ſuch a Caſe *by the Common Law*, but not Treſpaſs till the Statute of Marlebridge. Br. Replegiare, pl. 2. cites 9 H. 6. 25.

6. If a *Man diſſeiſes a Corporation, and levies a Fine*, and *5 Years paſs*, the Statute of the 4 H. 7. doth extend to them, if they are ſuch Corporations as have of themſelves an abſolute Eſtate and Authority, as *Mayor and Commonalty, Deans and Chapters, Colleges*, and ſuch like; for as they have a Power to take Lands and Tenements, ſo they ought to have Care to defend them, and they and their Succeſſors *ought to make their Entry and their Claims to* avoid Fines, as other Perſons and their Heirs ought to do; *But* if a *Biſhop, Dean, Parſon, Vicar, or Prebendary*, or ſuch like, do not make their Entry or Claim, or bring their Actions to avoid the Fine within 5 Years, but are remiſs through all this Time, yet *their Succeſſors ſhall not be bound for ever*, in aſmuch as they have no abſolute Eſtate orAuthority in their Poſſeſſions; for the Biſhop and Dean, cannot do Things to bind their Poſſeſſions without having the Aſſent of the Dean, and Chapter, and the Parſon, Vicar, and others &c. without the Aſſent of the Patorn and Ordinary, who have an Intereſt and Part in the Matter, and though every Succeſſor ſhall have 5 Years to make his Claim or Entry, yet *every one who ſuffers the 5 Years to paſs ſhall be bound during his Time, but* though he is bound, *his Succeſſor ſhall have other 5 Years to make his Entry or Claim, or bring his Action*. Plow. Com. 538. a. b. Trin 20 Eliz. Croft v. Howell.

3 Salk. 103. S. C. accordingly. ——6 Mod. 25. S. C. but S. P. does not appear.

40. Though a Corporation cannot do an *Act in Pais* without their *Common Seal*, yet they may do no Act upon Record, becauſe they are eſtopped by the Record to ſay it is not their Act. 1 Salk. 192. pl. 4. Hill. 1 Ann. B. R. The Mayor of Thetford's Caſe.

41. A Corporation made a *Contract for letting the Market* at Bridport in Dorſet, tho' not in Writing, being from Year to Year, and held to be good. At Dorcheſter Aſſiſes 1749. Coram King Ch. J.

(K. 2) Of Executing Deeds by a Corporation.

1. IF Abbot and Covent make a Deed, and do *not deliver it but by Attorney*, this *Attorney ought to have Letter of Attorney of them to deliver it*; Per Choke and Jenny. Br. Corporations, pl. 72. cites 9 E. 4. 39.

2. Corporation may *make a Deed out of their Houſe*, for all may come out to another Place &c. *but if* it be *dated in the Chapter Houſe* it cannot be [delivered] in another Place. Br. Corporations, pl. 72. cites 9 Ed. 4. 39.

3. The Abbot and Covent may make a Deed *in another County than where the Abbey is*, and this by the beſt Opinion of the Court. Br. Lieu, pl. 63. cites 21 E. 4. 26.

2 Le. 97. pl. 119. S. C. agreed accordingly by the whole Court. —— S. P. Vent. 257. Paſch. 26 Car. 2. B. R. Anon. and held to be a good Leaſe; For though the putting of a Seal of a Corporation aggregate to a Deed carries with it a Delivery, yet the Letter of Attorney to deliver it upon the Land ſhall ſuſpend the Operations of it till then.

4. Dean and Chapter *made a Leaſe*, *rendring Rents*, and for Default of Payment to re-enter. The Rent was not paid, whereupon they *made a Leaſe* to the Plaintiff, *and in their Chapter-Houſe put their Seal to it, and made a Letter of Attorney to J. S. enter, and deliver the Deed upon the Land.* It was objected, that the 2d Leaſe not good, becauſe the Dean and Chapter let it in the Chapter-Houſe by ſetting their Seal to it, which made it a perfect Deed, and ſo there could be no other Delivery; and therefore the *firſt Leſſee continuing in Poſſeſſion*, and they out of Poſſeſſion the Leaſe was void, and the Delivery by the Attorney, it having a former Delivery, is void; ſed non allocatur; For there is no other Means for a Corporation to make a Leaſe but this. Cro. E. 197. pl. 3. Hill. 32 Eliz. B. R. Willis v. Jermin.

5. If a *Perſon pretending to be Mayor* of a Corporation, puts the Corporation Seal to a Deed, yet it is not by that the Deed of the Corporation; Per Holt Ch. J. 12 Mod. 423. Mich. 12 W. 3.

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5. A Maſter of an Hoſpital may have Trepaſs for *Goods taken away in the Time of his Predeceſſors*. F. N. B. 89. (G.)

And ſo of an Abbot or Prior. Ibid (H) — But a *Replevin* will lie in ſuch a Caſe *by the Common Law*, but not Treſpaſs till the Statute of Marlebridge. Br. Replegiare, pl. 2. cites 9 H. 6. 25.

6. If a *Man diſſeiſes a Corporation, and levies a Fine*, and *5 Years paſs*, the Statute of the 4 H. 7. doth extend to them, if they are ſuch Corporations as have of themſelves an abſolute Eſtate and Authority, as *Mayor and Commonalty, Deans and Chapters, Colleges*, and ſuch like; for as they have a Power to take Lands and Tenements, ſo they ought to have Care to defend them, and they and their Succeſſors *ought to make their Entry and their Claims to* avoid Fines, as other Perſons and their Heirs ought to do; *But* if a *Biſhop, Dean, Parſon, Vicar, or Prebendary*, or ſuch like, do not make their Entry or Claim, or bring their Actions to avoid the Fine within 5 Years, but are remiſs through all this Time, yet *their Succeſſors ſhall not be bound for ever*, in aſmuch as they have no abſolute Eſtate orAuthority in their Poſſeſſions; for the Biſhop and Dean, cannot do Things to bind their Poſſeſſions without having the Aſſent of the Dean, and Chapter, and the Parſon, Vicar, and others &c. without the Aſſent of the Patorn and Ordinary, who have an Intereſt and Part in the Matter, and though every Succeſſor ſhall have 5 Years to make his Claim or Entry, yet *every one who ſuffers the 5 Years to paſs ſhall be bound during his Time, but* though he is bound, *his Succeſſor ſhall have other 5 Years to make his Entry or Claim, or bring his Action*. Plow. Com. 538. a. b. Trin 20 Eliz. Croft v. Howell.

(L) *What* Things ſhall *go in Succeſſion.*

Fol. 515.

Unleſs where there is a Cuſtom for it; As in

1. REgularly, no Chattel ſhall go in Succeſſion in Caſe of a ſole Corporation. Co. Lit. 46. b. Coke 4. Fulwood 65. the Caſe of the Chamberlain of London, who is made by Cuſtom, and the ſame Cuſtom which has created him, and made him a Corporation in Succeſſion as to the ſpecial Purpoſe concerning Orphanage has enabled the Succeſſor to take ſuch Obligations, Recognizances &c. as are made to the Predeceſſor, and the Executors &c. of the Chamberlain ought not to intermeddle with them, they being by the ſaid Cuſtom taken in his Corporate, and not in his private Capacity; But Biſhops, Parſons &c. have no ſuch Cuſtom to take Chattles in their Politick or Corporate Capacity. 4 Rep. 65. a. Hill. 33 Eliz. Fulwood's Caſe.——Cro. E. (464. bis) pl. 16. Paſch 38 Eliz. B R. Bird v. Wilford the S. P. as to the Chamberlain of London held accordingly, by Gawdy and Fenner, (Popham and Clench abſentibus) and Judgment Niſi, which was afterwards affirm'd, and at the End of the Caſe is a Note, that in Mich. 43 & 44 Eliz. B. R. Milford v. Hutton, Debt was brought on ſuch a Recognizance made to the Predeceſſor, alleging the Cuſtom of London for the Chamberlain to take Obligations or Recognizance to them and their Succeſſors for Orphans Portions; and after Judgment for the Plaintiff, Error was brought thereof in the Exchequer-Chamber, where the Judgment was affirm'd.—— A Succeſſion of *Chattles* in one Perſon will not be preſum'd except *in Caſe of an Abbot, or Prior*, or the like Corporations known in Law to reſt in one Perſon, as well for Chattles as Inheritances; For otherwiſe Biſhops, Deans, Parſons, Vicars &c. cannot take Obligation to them and their Succeſſors but they will go to their Executors. Hob. 64. in pl. 65.

His Executors ſhall have it en auter Droit. Co. Litt. 46. b.

2. If a Leaſe for Years be made to a Biſhop and his Succeſſors, and the Biſhop dies, this ſhall not go to his Succeſſors, but to his Executors. Co. Lit. 46. b.

3. If a Maſter of an Houſe that hath a Covent and Common Seal recovers in an Annuity, and after Arrearages incur, and after he dies, the Succeſſor-Maſter ſhall have the Arrearages, and not the Executor of the Predeceſſor, becauſe the Predeceſſor could not make a Teſtament. 19 H. 6. 44. b. adjudged.

See tit. Succeſſors (C) pl. 8. and the Notes there.

4. But if a Parſon recovers an Annuity, and after Arrearages incur, and after the Parſon dies, the Executor of the Parſon ſhall have the Arrearages, and not the Succeſſor, becauſe he could make a Teſtament. 19 H. 6. 44. b.

Cro. J. 159. pl. 13. S. C. & S. P. held accordingly. ——Noy. 111. S. C. adjudg'd accordingly per tot. Cur. ——Brownl. 93. S. C. but not adjudged.

5. The Patent confirmed by Act of Parliament is, that Offenders in practiſing Phyſick in London without Admiſſion by the College of Phyſicians, ſhall forfeit 5 l. for every Month, unum Dimidium Regi & alterum Dimidium dicto Preſidenti and Collegio; if the Preſident of the College recovers in Debt againſt an Offender, and dies, the Succeſſor ſhall have a Scire Facias to execute it, and not the Executor, for the Predeceſſor recovered it as due to him and the College. P. 5 Ja. B. R. between *Atkins* and *Gardiner*, adjudged.

Br. Chattles, pl. 4. cites S. C.—— Br. Scire Facias, pl. 106. cites S. C.

6. The *Ornaments of the Chapel of a preceding Biſhop* belong to the ſucceeding Biſhop, tho' other Chattles in Caſe of a ſole Corporation do belong to the Executors of the Party deceaſed, and ſhall not go in Succeſſion; Per Coke Ch. J. 12 Rep. 105. cites 21 E. 4. 48.

But Ibid. Marg. cites Mich. 41 & 42 Eliz. C. B. an Obli-

7. A Man was *obliged to a Dean in* 20 *l. ſolvend' eidem Decano & Succeſſoribus ſuis*; the *Dean died*; Shelley held that the Succeſſor ſhall have it, for the Dean has a Corporation to him and his Succeſſors, as well as to him and his Heirs or Executors; So of a Biſhop, Abbot, or Prior,

if the Succeſſors are named in the Obligation his Executors ſhall not have it; *Contra of a Mayor, or* the *Guardians of a Church*, and their Succeſſors; Baldwin held, the Payment to the Dean and Succeſſors was void, becauſe the Obligation was to the Dean only. D. 48. a. pl. 15. Trin. 32 H. 8. Anon.

gation was made to the Biſhop of Bath and Wells and his Succeſſors, and adjudged, that the Succeſſors cannot have Action of Debt thereupon; But they agreed, that the Succeſſor might have Covenant upon a Leaſe for Years, which is in the Realty. The Doubt was, becauſe after the Death of ſuch Perſon who is a Corporation ſingle, the Obligation is due to no Body, and ſo ſuſpended, & Actio Perſonalis once ſuſpended moritur &c. But Nulla Regula, quin fallit.

8. When a *Biſhop makes an Eſtate, Leaſe, Grant of a Rent-Charge, Warranty*, or any *other Act which may tend to the Diminution of the Revenues of the Biſhop* &c. which ſhould maintain the Succeſſor, the *Deprivation or Tranſlation* of the Biſhop *is all one with his Death*; *But where* the Biſhop *is Patron and Ordinary, and confirmeth a Leaſe made by the Parſon without the Dean and Chapter*, and after the *Parſon dies*, and the *Biſhop collates another, and then is tranſlated*, yet his Confirmation remains good, for the Revenues that are to maintain the Succeſſor are not thereby diminiſhed; The like Diverſity holds in Caſe of *Reſignation*. Co. Litt. 329. a.

9. The *ancient Jewels of the Crown* are Heir Looms, and ſhall deſcend to the next Succeſſor, and are not deviſable by Teſtament. Co. Litt. 18. b.

The King cannot diſpoſe of them by Teſtament, but he may give them by Letters Patents; Per Berkeley and Jones. Cro. C. 344. pl. 8. Hill. 9 Car. B. R

(M) Election and Amotion of Officers, Members &c. At what Time; And How.

1. MEmorandum, that at the Parliament held by Adjournment H. 38. H. 8. it was admitted by Writ of the King, and ſo accepted, that if *one Burgeſs be made Mayor of a Vill, that has judicial Juriſdiction, and another is Sick*, that thoſe are ſufficient Cauſes to elect new ones, by which they did ſo by Writ of the King out of Chancery, comprehending this Matter which was admitted, and accepted in Communi Domo Parliamenti. Br. Parliament, pl. 7. cites 38 H. 8.

2. Where a City, Borough, or Vill is incorporated by Charters, ſome by one Name, and ſome by another, and it is directed in the Charter that the Mayor, Bailiffs, Aldermen &c. ſhall be choſen by the Commonalty or Burgeſſes, there being in every Charter a Power to make Laws, Ordinances, and Conſtitutions for the better Government of the Cities &c. they *may by their common Conſent ordain that the Mayor or Bailiffs, or other Principal Officers, ſhall be choſen by a certain ſelected Number of the Principal of the Burgeſſes, or of the Commonalty, and preſcribe alſo how ſuch a ſelect Number ſhall be choſen*; And tho' in ſome Corporations ſuch Conſtitutions can't be known or found, where the Uſage of electing hath been in a particular Number, yet it ſhall be preſumed that there were ſuch anciently. 4 Rep. 77. b. 78. Mich. 40 & 41 Eliz. The Caſe of Corporations.

3. Upon a *Quo Warranto* againſt the Town of Liskardy *in Car. 2d's. Time, they ſurrendred their Charter*, which was *not enrolled till King James*

James the 2d, who in Conſideration of the Surrender, *granted a new Charter* to them. It was held per Cur. that the ſecond Charter being in Conſideration of a void Surrender, was alſo Void and where by the Charter ſurrendred *none could be Mayor*, if he were *not a Capital Burgeſs*, and one was made a Capital Burgeſs by the Charter of King James, and after made Mayor according to the old Charter. Queſtion was ſtarted, whether he were a legal Mayor? Holt and Cur. ſaid, you ſhould firſt have moved him from being a Capital Burgeſs, for if we find one in actual Poſſeſſion of an Office, we ſhall *intend him* to be *rightful* Officer till the contrary appears; As if Mere Laicus be preſented &c. to a Benefice; we ſhall take him for a Clerk till firſt ſteps be annulled. 12 Mod. 253. Mich. 10 W. 3. Piper v. Dennis.

4. Note, by their *Charter* they are *impowered to proceed to an Election on ſuch Day*; and per Holt and Turton, if they do not chuſe on that Day, they cannot do it the next Day; for they muſt purſue their Patent, and that gives Power only for one Day, and tho' the Mayor be ſick, ſo as he cannot officiate that Day, there is no Remedy; and Turton ſaid, that in ſuch a Caſe they were *forced to Petition*, in Caſe of Corporation of Norwich; and they ſaid, they had known a *Quo Warranto* go againſt the Corporation *for chuſing at another Day*; But Wright, then King's Serjeant, and ſince Lord Keeper, was ſtrong againſt this Opinion. 12 Mod. 308. Mich. 11 W. 3. in Caſe of The King v. Borough of Abingdon.

5. At an Election of Mayor *an unqualify'd Perſon has the moſt Votes*; afterwards they proceed to a *new Election*, and a third Perſon, who is quality'd, has the Majority; this third Perſon is the Mayor duly elected, and not he that had moſt Votes *next to the unqualify'd* Perſon. 8 Mod. 37 Hill. 7 Geo. 1. The King v. the Mayor of Bedford.

6. Where the *Election* is to be by 26 Burgeſſes, and 1 *Burgeſs is unqualify'd*, the Election is void. Arg. 8 Mod 36. Hill. 7 Geo. the King v. the Mayor of Bedford.

But if one unqualify'd is elected a *Common Council man* &c. with others that are qualify'd it is void as to him only. 8 Mod. 36. Hill. 7 Geo. the King v. the Mayor of Bedford.

7. Where by the Charter of Incorporporation the *Election is to be on a certain Day*, it * *cannot be made at a Day after in that Year, unleſs upon the Death or Removal of the Mayor in being*; For if they ſhould elect on any other Day, it is not Secundum Authoritatem given by the Charter; and there can be no Inconvenience if they ſhould ſtay till another Day appointed by the Charter for them to chuſe a new Mayor; becauſe (by this Charter) it is expreſsly provided, that the Mayor elected ſhall continue in his Office till another is duly choſen, which cannot be but upon the very Day appointed; For where they have no Power by their Charter to chuſe on any other Day, their *Corporation ſhall be diſſolved rather than they ſhould make an Election on another Day*, and this Court cannot compel them to chuſe a Mayor on any other Day, where there is a Mayor already in being; Per Cur. 8 Mod. 129. Paſch. 9 Geo. 1. B. R. The King v. the Mayor and Burgeſſes of Tregenny.

* S. P. Arg. 8 Mod 36. Hill. 7. Geo. in Caſe of the King v. the Mayor &c of Bedford.

8. *Information* in Nature of a Quo Warranto was granted for *Uſurping the Office* of Mayor. 8 Mod. 234. Paſch. 10 Geo. The King v. Pindar.

The like was granted againſt C. the *Mayor* of Tregenny; and on the Day the Writ was returnable the Sheriff brought him in, and he was *committed to the King's Bench* till the Court ſhould conſider what Fine to ſet on him; and a Rule was made, that he ſhould be *carried down* to Tregenny at the next Election-Day for a Mayor, in order to proceed to an Election, which was done; and upon a Mandamus directed to him for that Purpoſe, he return'd that T. S. was duly elected Mayor, and that he was willing to Swear him into that Office; But he having

having misbehaved himſelf in this Election, there being no more than two who Voted for the new Mayor, who therefore refuſed to be Sworn, leaſt he likewiſe ſhould be proſecuted upon an Information for uſurping the Office; So that C. continued Mayor ſtill, having been Mayor, though he was ſix Months in Priſon; and for this Misbehaviour he was found Guilty, and *fined* 200*l.* *and to ſtand committed till he paid it.* 8 Mod. 285, 286. Trin. 10 Geo. The King v. Cracker.

9. Altho' a *Charter directs that the Alderman ſhall be elected annually*, yet ſuch Clauſe is only directory, and *the Office of Alderman is not thereby determined at the End of the Year after his Election*, but the Perſon elected continues Alderman till dead, or removed in the ſame Manner as a Perſon elected into the Office of Mayor. MSS. Tab. March 16. 1725. Proſe v. Foot, upon a Writ of Error.

10. *Charter that the old Mayor ſhall continue till another was duly elected and ſworn*; Another is duly elected, yet he cannot act as Mayor till ſworn, and Judgment in Quo Warranto againſt ſuch Mayor. M.S. Tab. March. 1725. Pender v. the King, in Error.

11. All the Members of a Corporation are *invited to drink a Glaſs of Wine at a Tavern*; After their being met, *one of the Body reſigns* his Office, and then *they go immediately to an Election.* On a Trial at Bar the Jury found it a good Election, but the Court thought it againſt Evidence, and granted a new Trial. This was on Return to a Mandamus, and after a peremtory Mandamus granted. Court ſaid, this was a Surpriſe, there being no Notice of a Vacancy and a Fraud, and that Body circumvented; tho' Ch. J. ſaid, that he thought, *if all the Members were together, and all concurr'd in Election*, or did any other Corporate Act, that would be good, tho' no previous Notice; But Forteſcue doubted; for the Body ought to be Corporaliter congregat' et Aſſemblat', this thing is not proper at an Ale-houſe, but at Guild-hall, that is a proper Place for all Buſineſs; many Inconveniences would be if theſe things were allow'd, but no Inconvenience where the Proceedings is free and open, which ought to be in all Caſes. The Members ought to have Time to conſider who is a proper Perſon to be choſen in. Paſch. 10 Geo. The Caſe of Appleby.

Every Election ought to be without any ſurprize, fraud, or Circumvention. coram Raymond Ch. J. at Lanceſton. 1723. The Caſe of Penryn in Cornwal.

12. The major Part of a Common Council cannot elect a Member at a Meeting of the Corporation ſummoned for another Purpoſe. 2 Ld. Raym. Rep. 1355. Paſch. 10 Geo. 1. Machel v. Nevinſon.

13. An Election of a Member by the other Members of a Corporation not corporately aſſembled, muſt be aſſented to by every one. 2 Ld. Raym. 1359. Paſch. 10 Geo. 1. Muſgrave v. Nevinſon.

(N) Election. By Virtue of a new Charter.

1. AN *Information* ſhews that the City of Norwich is an ancient City, and that *Hen.* 4. by his Charter, *granted that the Mayor, Aldermen, and Citizens, might elect two to be Sheriffs of the ſaid City*, and that after this, *Charles* 2*d*, in the 18th Year of his Reign, by his Charter, *granted that* the *Mayor and Aldermen might elect one Sheriff, and the Citizens another.* The Mayor, Aldermen and Citizens, having the Election of the Sheriff in them, they *might by Conſent alter the Manner* of the Election, *and* their *Acceptance* of the Charter of Car. 2. *and having elected according* the Form preſcribed in it, is an *Evidence* of ſuch Conſent, and therefore though the Charter of the King may not alter the Manner veſted and ſettled by the Charter of Hen. 4. Yet if they accept ſuch a Charter, and conſent to it, and act in Conformity to it,

1 Salk. 167. pl. 1. S. C. & S. P. —— Comb. 315, 316. S. C. & S P.

and acquieſce under it, ſuch Charter is good, and this Submiſſion and Conformity ſhall be an Evidence of their Conſent, and therefore the Election is good. Skin. 574. 576. Hill. 6 W. 3. B. R. The King v. Larwood.

(O) Pleadings by or againſt Officers, as to their Election &c.

1. TReſpaſs upon the 5 *R.* 2. the *Defendant ſaid, that his Predeceſſor, Maſter of the Hoſpital of D. was ſeiſed, and dy'd, and he enter'd as Maſter*, and gave *Colour*, and held no Plea; becauſe he did not *ſhew the Foundation, and that he was elected, and made Maſter*, quod nota; by which he amended his Plea, and ſaid, that it is the Hoſpital of St. John, *incorporated of Brothers and Siſters Time out of Mind*, and that they *uſed, after the Death of every Maſter, that the Brothers and Siſters ſhould chuſe another Maſter, and that J. late Maſter was ſeiſed, and died, and that this ſame Defendant, before the Entry &c. was elected Maſter by the Brothers and Siſters, and enter'd* &c. as above, and well, *without expreſſing the Number* of Brothers and Siſters; For the Corporation was made before Time of Memory, and peradventure does not expreſs the Number. Br. Action ſur le Statute, pl. 9. cites 34 H. 6. 27.

2. *But if the Number be expreſs'd in the Foundation*, there he ought to expreſs it; Quod fuit conceſſum. Ibid.

(O. 2) Property of Goods of Corporations. In whom it ſhall be ſaid to be; And Pleadings.

1. DUring *the Life of the Abbot, the Property is in the Abbot only*, and he may give them; *but if he dies, or be depoſed*, the Property *is in the Houſe*. Br. Abbe, pl. 2. cites 9 H. 6. 25.

2. When a *Count* or Pleading is made, which *ſpeaks of an Abbot who is dead or removed*, it ſhall be called *Goods of the late Abbot, but* when it is of an Abbot who is alive, or *in Poſſeſſion*, it ſhall be entred *Goods of the Abbot only*; Note a Difference. Br. Abbe, pl. 2. cites 9 H. 6. 25.

(P) Actions by or againſt them. What, and How; And where any Members are liable in their private Capacity.

1. AN *Abbot* being *Parſon imparſonee* of a Church appropriated, had *Juris Utrum of the Glebe* Land of this Church. Thel. Dig. 19. Lib. 1. cap. 22. S. 5. cites Hill. 8 E. 3. 473.

2. Note,

2. Note, per Thorp, that *Treſpaſs* does not lie againſt Commonalty, but ſhall be brought *againſt the Perſons by their proper Names*; for Capias nor Exigent lies not againſt Commonalty. Br. Treſpaſs, pl. 239. cites 22 Aſſ. 67.

3. *Capias in Debt* ſhall not be awarded againſt Corporation; for the Body Politick cannot be taken; Per Choke Juſtice. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

4. The *Abbot* ſhall have *all Manner of Actions touching the Rights, Titles, Intereſts, Properties and Poſſeſſions of their Abbies.* Thel. Dig. 19. Lib. 1. cap. 22. S. 4.

5. *Money was borrowed by the Company of Woodmongers*, who were incorporated, and a *Bond was ſealed with their Common Seal*, and ſubſcribed by the Defendants, who were two of the Principal of the Company. The Bond was Noverint Univerſi &c. Nos Magiſtrum & Guardianos &c. of the Company of Woodmongers teneri &c. and now *the Company being diſſolved, Action was brought againſt thoſe who ſubſcribed the Bond*; but ruled, that it could not lie; ſo the Plaintiff was Nonſuit. Lev. 237. Paſch. 20 Car. 2. B. R. Edmonds v. Brown. & al'.

6. A *Member* of a Company *ſets his Name to a Bond* under the Common Seal of the Company; This does not legally bind him in his private Capacity. Arg Fin. R. 84. Hill. 25 Car. 2. in Caſe of Naylor v. Brown late Maſter of the Woodmongers Company & al'.

7. A. lends 500 l. to a Company, who gives *Bond under their Common Seal* for Re-payment with Intereſt; afterwards the Company *aſſigned a Bond* of 1000 l. *due to them* to J. S. for Payment of ſome of their Debts, and J. S. *declared the Truſt* of 620 l. Part for *ſeveral Members* of the ſaid Company, who were paid accordingly; but decreed Repayment by the ſaid Members, and that A be firſt paid with Damages and Coſts; and the Court was of Opinion, that the Declaration of the Truſt by a Stranger (as J. S. was) as to the 620 l. was utterly void, becauſe the *Corporation did not join in declaring the Truſt*, or give J. S. any *Authority under their Common Seal*, or by any Corporate Act to make ſuch a Declaration. Fin. R. 83. Hill. 25 Car. 2. Naylor v. Brown, late Maſter of the Woodmongers Company & al' Members of the ſaid Company.

8. For a Duty or *Charge upon a Corporation*, every particlar Member thereof is not liable, but *Proceſs ought to go in their publick Capacity.* Nota, ſic dictum fuit. 1 Vent. 351. Mich. 32. Car. 2. B. R.

(Q) Actions. Names. By what Names they ſhall ſue, or be ſued.

1. THE Function to be *Maſter of an Hoſpital* is a Dignity, and he ought to be ſued by ſuch Name, otherwiſe the Writ ſhall abate; Per Scrope. Thel. Dig. 35 Lib. 3. cap. 3. S. 4. cites Hill. 2 E. 3. 48.

2. But *Provoſt* is not a Name of Dignity. Thel. Dig. 35. Lib. 3. cap. 3. S. 4. cites Hill. 17 E. 3. Nomen Dignit' 6.

3. A Man may ſue an Abbot or Prior by Name of *Abbot Sanctæ Trinitat' de M.* or Beatæ Mariæ Eborum, or Prior Sancti Oſwaldi &c. *without ſaying Monaſterii, or Domus talis Sancti*, or ſuch like. Thel. Dig. 50. Lib. 6. cap. 3. S. 5. cites Mich. 3 E. 3. 109.

4. And

4. And againſt the Abbot of Dorcheſter, without ſaying *Abbati Eccleſiæ Beatæ Mariæ de Dorcheſter.* Thel. Dig. 50. Lib. 6. cap. 3. S 5. Trin. 10 E. 3. 516.

5. In *Action real* the Writ may well be brought *againſt an Abbot, without naming him by Name of Baptiſm.* Thel. Dig. 49. Lib. 6. cap. 2. S. 2. cites Trin. 7 E. 3. 324. 10 H. 6. 1. and 12 H. 4. 5.

Thel. Dig. 175. Lib. 11. cap. 54. S 24. cites 5. C.

6. *But in Writ of Entry* againſt an Abbot, the Abbot by whom the Entry is ſuppoſed ought to be named by his Name of Baptiſm. Thel. Dig. 49. Lib. 6. cap. 2. S. 2. cites Trin. 7 E. 3. 324. 10 H. 6. 1. and 12 H. 4. 5.

7. [*But*] *Replevin* lies againſt an Abbot without naming him by Name of Baptiſm. Thel. Dig. 49. Lib. 6. cap. 2. S. 2 cites Trin. 7 E. 3. 334.

8. *So* of Writ of *Debt.* Thel. Dig. 49. Lib. 6. cap. 2. S. 2. cites Trin. 18 E. 3. 24.

9. *But* in *Treſpaſs contra Pacem* againſt an Abbot he ſhall be named by his Name of Baptiſm. Thel. Dig. 49. Lib. 6. cap. 2. S. 3. cites Mich. 8 E. 3. 427. but ſays the contrary is held Paſch. 39 E. 3. 17.

10. Aſſiſe againſt the Abbot of Selby, and did not ſay of what Saint the Abbey is, and good, becauſe they are known by this Name, and ſo ſee that Action by a Corporation is good *by Name known.* Br. Corporations, pl. 40. cites 8. Aſſ. 24.

11. An *Abbot may ſue* Writ of *Treſpaſs without* naming himſelf by his *Name of Baptiſm.* Thel. Dig. 34. Lib. 3. cap. 1. S. 3. cites Mich. 8 E. 3. 427.

12. *So* he may ſue *Scire Facias to have Execution out of a Judgment* without naming himſelf by his Name of Baptiſm. Thel. Dig. 34. Lib. 3. cap. 1. S. 3. cites Paſch. 29 E. 3. 44.

13. A Writ brought by an Abbot by Name of *Tho. Abbatis beatæ Mariæ Eborum* was adjud'd good *without ſaying Abbot of the Church of our Lady of York* &c. Thel. Dig. 37. Lib. 3. cap. 9. S. 1. cites Mich. 8 E. 3. 436. and 8 Aſſ. 44. and Hill. 3 H. 6. 28. and 5 E. 4. 20.

14. Writ was maintain'd againſt a Corporation by Name of *Præpoſitori Scolarium Domus Beatæ Mariæ de Oxon'.* without ſaying Præpoſitor' & Scolaribus &c. Thel. Dig. 53. Lib. 6. cap. 12. S. 1. cites Trin. 22 E. 3. 9.

Thel. Dig. 20 Lib. 1. cap. 22. S. 13. cites S. C. and ſays, See 2 H 9. 6. and 3 H. 6. 43.

15. *Treſpaſs does not lie againſt a Corporation,* viz. *by the Name of Corporation,* but againſt the Perſons who did it by their proper Names; for Capias nor Exigent does not lie againſt Commonalty, nor *Commonalty ſhall not plead nor be impleaded but with the Mayor or Bailiffs, if they have Mayor or Bailiffs,* and Corporation may be by Name of Commonalty without Mayor, Bailiff, or other Head. Br. Corporations, pl. 43. cites 22 Aſſ. 67. per Thorp.

* 10 Rep. 126. a. cites S. C. and Lord Coke ſays, that therefore it ſeems to him reaſonable a Multo fortiori to inforce every one that would avoid a Writing, Demiſe, Grant &c. made by, or to a Corporation, by reaſon of any Verbal or Literal Miſnoſmer, to ſhew that there are two Corporations within the ſame City, Borough, or Vill &c. viz. One by the true Name, and the other by ſuch Name as is contained in the Deed &c. and ſo to leave the Deed &c. good by or to one of them; but when in Truth there is but one and the ſame Corporation, Demiſes, Grants &c. made by them, or to them, ought not be avoided by ſuch nigh and Verbal Variances, when, in Subſtance the true Name of the Corporation, whether by Matter expreſs'd, or neceſſarily implied within the Words themſelves, appears to the Court.

16. The Writ was *Præcipe Priori de Wigorn*; and the *Defendant ſaid, that there is in Worceſter the Prior of the Freres Preachers, and* the Prior *de Noſtre Dame* &c. by which the Writ abated. Thel. Dig. 53. Lib. 6. cap. 12. S. 2. cites Mich. * 25 E. 3. 48. notwithſtanding that the Demandant tender'd that the Defendant was known by ſuch Name. Concordat 29 Aſſ. 70. But none but the Prior pleaded in Aſſiſe.

17. A Writ of *Annuity* was maintained againſt an Abbot without naming him by Name of Baptiſm. Thel. Dig. 50. Lib. 6. cap. 2. S. 5. cites Trin. 31 E. 3. Brief 342.

18. So of Writ of *Ejectment of Ward.* Thel. Dig. 50. Lib. 6. cap. 2. S. 5. cites Mich. 22 E. 3. 17. where it was ſaid, that in a *Pone per vad'* he ought to name him by his Name of Baptiſm.

19. Notwithſtanding that *Land* be *given to an Abbot by Name of Baptiſm, and to his Succeſſors ad inveniend' Cantar'* &c. yet the Writ of *Ceſſavit lies* againſt him *by Name of Abbot*, without naming him by his Name of Baptiſm. Thil. Dig. 50. Lib. 6. cap. 3. S. 2. cites Paſch. 32 E. 3. Brief 291.

20. Writ brought by the King againſt one by Name of *Provoſt of the Houſe of C.* was abated, becauſe the Corporation by the Grant and Licence of the King was *founded and named Provoſt of the Chancery of G.* Thel. Dig. 53. Lib. 6. cap. 12. S. 3. cites Trin. 38 E. 3. 17.

21. In *Writ* brought *againſt theProrefs of Newarke in* Dorceſter, it was ſaid, that ſuch Writ is maintainable with alleging that it is known by ſuch Name, if Charter of the King of Foundation, or any other Thing of Record be not ſhewn to the contrary; And upon this the Charter of of Foundation was ſhewn forth, by which the King had granted Land to found a College of Siſters in the Prechors of Dorceſter, by which the Writ abated for the *Surpluſage of Newark.* Thel. Dig. 53. Lib. 6. cap. 12. S. 4. cites Mich. 38 E. 3. 33.

22. Scire Facias was ſued againſt the *Prior of Saint John's of Hieruſalem* in England upon a Recovery in Waſte, which was Prior *of the Hoſpital of Saint John's of Jeruſalem* in England, and Exception taken; Per Thorp, it is *known by the one Name and the other*, and therefore anſwer; Quod Nota. Br. Miſnomer, pl. 15. cites 44 E. 3. 16.

23. Every Corporation may ſue *by its very Name of Foundation, notwithſtanding* that *it be not known by this Name, but better* known *by another* Name, as the Maſter of the Scholars of the Hall of *Valens Mariæ in Cambridge*, brought Writ by this Name of his Foundation where it was better known by the Name of *Pembroke-Hall.* Thel. Dig. 37. Lib. 3. cap. 9. S. 2. cites Mich. 44 E. 3. 35. Brief 582.

24. *Dean and Chapter* cannot maintain Writ, if the Dean be not named *by his Name of Baptiſm.* Thel. Dig. 34. Lib. 3. cap. 1. S. 4. cites Mich. 14 H. 4. 11. but cites 21 E. 4. 19 contra.

25. Where a *Prior* had *brought Writ of Entry, upon Diſſeiſin* made to himſelf *of Land* of which he was ſeiſed *in his own Right*, Exception was taken that he had not named himſelf by his *Name of Baptiſm and Surname*; Quære. Thel. Dig. 34. Lib. 3. cap. 1. S. 5. cites Mich. 9 H. 5. 9.

26. In Writ of Covenant by the Abbot of W. againſt the Commonalty of S. it was agreed, that where a Corporation is by Name of Commonalty, and after *by another Grant they have Bailiffs*, yet by this Change they *ſhall not be diſcharged of Covenants, Annuities* &c. to which they were bound before. Br. Corporations, pl. 3. cites 2 H. 6. 9.

27. *Præcipe* quod reddat *againſt Magiſtrum* ſive *Cuſtodem* & Presbyteros Collegii de A. was awarded good, though it was *ſive*, which is disjunctive, becauſe the Foundation was by thoſe Words. Br. Corporations, pl. 3. cites 7 H. 6. 13.

28. An *Abbot* ſhall have Writ of *falſe Impriſonment*, or *Battery*, or other *Treſpaſs* done *to his Perſon without* naming him, or by *Name of Baptiſm.* Thel. Dig. 34. Lib. 3. cap. 1. S. 6. cites Paſch. 7. H. 6. 29.

29. It was held, that *in Plea Perſonal where Proceſs of Outlawry lies* againſt an Abbot or Prior, he ought to be named by his Name of Bap-

tiſm. Thel. Dig. 50. Lib. 6. cap. 2. S. 7. cites Mich. 10 H. 6. 1. and ſays ſee 18 E. 4. 21.

30. Where a Man is *obliged by Name of Mayor of London, being Mayor, and after is removed*, the Writ ought to be brought againſt him by his proper Name. Thel. Dig. 50. Lib. 6. cap. 2. S. 8. cites 14 H. 6. 21.

31. The *Dean and Canons of Windſor* is a good Name of Corporation to bring Action by Writ, *without ſhewing how they are founded by this Name.* Thel. Dig. Lib. 3. cap. 9. S. 7. cites Trin. 18 H. 6. 16.

32. Where the Name of the *Corporation was Bailiffs and Commonalty*, the Writ brought againſt them by the Name of *ſuch a one and ſuch a one Nuper Bailiffs and the Commonalty* is abateable. Thel. Dig. 53. Lib. 6. cap. 12. S. 9. cites Mich. 20 H. 6. 9.

33. In Writ of *Treſpaſs* to be brought *againſt an Abbot*, it ſuffices to name him *by the Name by which he is known* ; *But where Franktenement is demanded againſt him, which is of the Right of his Houſe*, he ought to be named *by his very Name of Foundation.* Thel. Dig. 54. Lib. 6. cap. 12. S. 10. cites Paſch. 20 H. 6. 9. and Mich. 21 H. 6. 4. where the Writ was maintained by ſaying that He was *known by the one Name, and by the other*, without ſaying that He and his Predeceſſors have been known by the one and the other &c.

34. *In Treſpaſs againſt an Abbot* it is ſufficient to name him *by Name known, but in Writ againſt him, which touches the Franktenement*, he ſhall be named *by his Name of Foundation*; Per Newton for Law, Quod non negatur. Br. Corporations, pl. 5. cites 20 H. 6. 27. and M. 21. H. 6. 4.

35. Miſnoſmer of Corporation *in Treſpaſs againſt him of his own Act* is no Plea *if it be named by a Name known.* Br. Miſnomer, pl. 31. cites 21 H. 6. 4.

S. P. agreed clearly for Law. Br. Miſnoſmer, pl. 85. cites 16 H. 7. 1.

36. *Contra in Action* brought *by the Corporation*, or in Action *againſt them of Right of the Houſe, and known by the one and by the other Name*, there it is a good Plea in Treſpaſs againſt the Abbot; Quod Nota. Ibid.

37. Writ was brought *againſt the Mayor and Commonalty* of Exeter and it was *pleaded, that they were incorporated by Name of Mayor, two Bailiffs, and Commonalty, Time out of Mind*, and held no Plea, *without ſaying* further, *that they had been impleaded by ſuch Name by ſuch Time, and not by the Name of Mayor and Commonalty without the Bailiffs* &c. and then the Plea ſhall be good. Thel. Dig. 54. Lib. 6. cap. 12. S. 12. cites Trin. 26 H. 6. Brief 101.

38. Writ brought *againſt a Prior by Name of Prior of the Church of St. Peter of B.* is not good, where *his right Name is Prior of the Church of Saint Peter and Paul of B.* Thel. Dig. 54. Lib. 6. cap. 12. S. 13. cites Mich. 35 H. 6. 5.

49. In *Writ of Entry* brought *againſt ſuch a one Warden of the Houſe of M. in Oxford*, it was *pleaded, that the Name* of the Corporation *was Warden and the Scholars of the Houſe* &c. *and ſo was founded, and by ſuch Name had purchaſed and impleaded, and been impleaded Time out of Mind* &c. It was held, that the Writ could not be maintained by ſaying that they had impleaded and been impleaded by the one Name and by the other, becauſe the *Corporation cannot be Tenant of the Land unleſs according to their very Name* &c. For the Warden only is not Tenant, and ſo it ſhall be of Dean and Chapter, but it may be *otherwiſe in Perſonal Action.* Thel. Dig. 54. Lib. 6 cap. 12. S. 14. cites Trin. 36 H. 6. 485.

40. Where an *Obligation* was made *Th. Abbati Monaſterii beatæ Mariæ extra Muros civitatis Eborum*, It was held by the Court that *Writ* upon this Obligation, *by Name of Abbatis Monaſterii beatæ Mariæ Eborum* ſhould be good. Thel. Dig. 38. Lib. 3. cap. 9. S. 11. cites Paſch. 5 E. 4. 20. and ſays, See Trin. 11 E. 4. 2.

41. The

41. The Maſter of Burton Sancti Lazari was received to maintain his Writ in ſuch Form, viz *that he, and all his Predeceſſors, Time out of Mind, were named and known, and have impleaded, and were impleaded as well by the one Name as by the other.* Thel. Dig. 38. Lib. 3. cap. 9. S. 9. cites Trin. 9 E. 4. 21. and ſays See Hill. 13 H. 7 14. per Keeble, and Mich. 16 H. 7. 1. agreeing.

42. In Writ upon *Contract or* of *Treſpaſs againſt Corporations* if the Defendant *Pleads Miſnoſmer* the *Plaintiff may ſay that known by the one Name and the other*; *But* ſuch Plea is *not* good *in Writ brought upon Specialty, where the Name varies from the Specialty.* Thel. Dig. 54. Lib. 6. cap. 12 S. 16. cites Trin. 11. E. 4. 2. 11 H. 6. 38. 63. and ſays See 1 E. 4. 7. Paſch. 5 E. 4. 20. Mich. 16 H. 7. 1.

43. *Mayor and Comonalty may ſue without naming the Mayor by his Name of Baptiſm*, as it ſeems. Thel. Dig. 38. Lib. 3. cap. 9. S. 10. cites Trin. 12 E. 4. 10.

44. Where a Corporation is *Maſter and Confreres*, and are ſued by the Name of *Maſter and Confreres ſive Socii*, this ſive Socii is void. Br. Corporations, pl. 8. cites 20 E. 4. 12.

45. A Corporation may be *Incorporated by one Name and impleaded by another Name by Grant of the King.* Thel. Dig. 38. Lib. 3. cap. 9 S. 12. cites Trin 11 H. 7. 27. 21 E. 4. 70.

46. If the *King grants to a Corporation to purchaſe or give by Name of Maſter and Wardens, Brothers and Siſters, and* by this grants to them *to implead and be impleaded by Name of Maſter and Wardens*, all is good, and ſhall be uſed accordingly, the one in Perquiſites and the other in Suits. Br. Corporations, pl. 95. cites 11 H. 7. 27.

47. If there be a Corporation *of one ſole Perſon that hath a Fee ſimple*, and may have a Writ of right, he *may be named* in Originals, &c. by the common Law *by his Criſtian Name, without any Sirname*; For the Name of his Corporation is in lieu of his Sirname (ſome ſay both Chriſtian Name Sirname) as John Abbot of D. &c. John Biſhop of N. but otherwiſe it is of a *Parſon*; for he *muſt be named by his Chriſtian Name and Sirname.* 2 Inſt. 666. Gilb. Hiſt. of C. B. 188. cites S. C. and ſays that the Reaſon is, becauſe in this Caſe *the Death of the Individual is a good Plea in Abatement.* For a new Succeſſor comes in his Place, who was not Party to the former Writ. ——Gilb. New Abr. 504 cites S. C. and for the ſame Reaſon in totidem Verbis.

48. If it be a Corporation *aggregate of many able Perſons*, as Mayor and Commonalty, Dean, and Chapter, Maſter of an Hoſpital and Confreces &c. the Mayor, Dean, or Maſter, *need not to be named by his Chriſtian Name*, becauſe that ſuch a Corporation ſtandeth in lieu both of the Chriſtian Name and Sirname. 2 Inſt. 666. Gilb. Hiſt. of C. B. cites S. C. for Bodies aggregate are *immortal and invariable*, and therefore the Parties to the firſt Writ are always the ſame.——Gilb. New Abr. 504. cites S. C. and gives the ſame Reaſon in totidem Verbis.

49. A Corporation as a Mayor and Commonalty *cannot diſtrain in their own Perſons*, but by their Bailiff. Brownl. 175. Maſter and Fellows of Emmanuel College in Cambridge's Caſe.

50. An Action lies *againſt the Members of a Corporation by their Private Names for a falſe Return to a Mandamus* directed to the Corporation by their Corporate Names. Per Cur. Comyns's Rep. 86. pl. 55. Trin. 12 W. 3. B. R. The King v. the Corporation of Rippon. And Holt Ch. J. ſaid, it had been ſo held in an Action for a falſe Return to a Mandamus directed to the Corporation of Canterbury. Ibid.

51. Some have held, that when a *Politick Perſon* is impleaded to *name him by the Name of his Politick Capacity, is ſufficient*, and that this will ſerve inſtead of Chriſtian or Surname, becauſe he is not to be diſtinguiſhed

guiſhed from natural Perſons, ſince as a natural Perſon he is not impleaded, but it is enough to diſtinguiſh him from all other Corporations. Gilb. Hiſt. of C. B. 188.

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52. A Corporation was inſtituted by the Name of *Præfecti & Guardianorum Naupegorum de Rederiffe*, and an Action is brought againſt them by the Name of *Præfecti Guardiani and Socii*, and accounted bad. Gilb. Hiſt. of C. B. 189.

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1. THE Opinion of Brian Ch. J. was, that the *Mayor and Commonalty* ſhould have Action *for the Impriſonment of their Mayor.* Thel. Dig. 20 Lib. 1. cap. 22. S. 14. cites Mich. 21 E. 4. 14 & 15.

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12. The *Maſter of* a *College* brought Writ without his *Confreres*. Thel. Dig. 19. Lib. 1. cap. 22. S. 10. cites Trin. 11 E. 4. 4.

13. It was held for Law, that a *Warden and Chaplains of a Chantery* ſhould have an Action of *Treſpaſs for breaking their Cloſe, againſt one who had a Leaſe of the ſame Cloſe of the ſame Warden alone without the Chaplains*, and ſhould Puniſh him for the Treſpaſs. Thel. Dig. 20. Lib. 1. cap. 22. S. 18. cites 21 E. 4. 75. and that ſo agrees Trin. 1 E. 5. 5. and 7 H. 7. 9.

14. *Grant* in a Corporation *which touches every ſingle Perſon*, there every ſingle Perſon ſhall have thereof Advantage by himſelf; *as* Grant *to be quit of Toll* &c. Per Catesby. Br. Corporations, pl. 65. 21 E. 4. 55, 56.

15. If an *Obligation* be made *to one B. and to an Abbot*, if *B. dies* now, *his Executors and the Abbot ſhall join* in Action of Debt. Thel. Dig. 32. Lib. 2. cap. 11. S. 9. cites F. N. B. tit. Writ de Debito.

16. Treſpaſs for entering into the Cloſe of the Dean; after Verdict found for the Plaintiffs, it was moved in arreſt of Judgement, that this *Action being brought for the Poſſeſſions of the Dean only*, the *Chapter was not to join*, and for this Cauſe Judgment was ſtaid. Cro. E. 200. pl. 23. Mich. 32, 33 Eliz. in B. R. Wolley v. Robinſon.

(U) Appearance of Corporations to Actions brought againſt them. How it muſt be.

1. IN *Writ againſt the Dean and Chapter*, the *Chapter cannot* appear nor *plead any Plea without the Dean, notwithſtanding that the Dean be dead.* Thel. Dig. 194. Lib. 13. cap. 4. S. 1. cites Hill. 7 E. 3. 302.

2. *And* in Writ *againſt Maſter and Scholars*, the *Maſter cannot* appear nor *plead without the Scholars.* Thel. Dig. 194. Lib. 13. cap. 4. S. 1. cites Trin. 34 H. 6. 49. but adds Quære if the *Head* of a Corporation can appear *in proper Perſon.*

B. Treſpaſs pl. 135. cites S. C.

3. Debt; *præcipe the Society of Lumbards London Merchants of Florence*, and *two Lumbards came* and named their Names, *and ſaid that they were diſtrained* by the Sheriffs of London, and returned in Iſſues 10l. and *pray'd that their Appearance be recorded as Lumbards of London to ſave their Iſſues, but not as of the Society* of Lumbards of London, ſed non allocatur, for the Writ ſhall be *intended to be againſt a Corporation.* Br. Corporation, pl. 28. cites 19 H. 6. 80.

* S. P. Br. Corporation, pl. 63. cites 21 E. 4. 7. 12. 27. 67. Per Brian and tot Cur.

4. *And* where *Mayor and Commonalty are ſued, and he and all the Commoners appear in proper Perſon*, this is not good, for it *is another Body*, therefore it ſeems that the Corporation ought to appear * *by Attorney*, by their Name of Corporation, and *not in proper Perſon.* Br. Ibid.

They cannot appear but by Attorney by Deed under their common Seal, and otherwiſe the Warrant is void, per Choke J. quod non negatur, therefore Quære of the Uſage thereof at this Day. Ibid.

5. *Mayor of Commonalty* cannot appear in Perſon; For the Court cannot tell if all appear or no, and therefore they *ought to make Attorney.* Br. Garrant de Attorney, pl. 36. cites 21 E. 4. 13.

6. In

6. In a *Quo Warranto* brought *againſt the Bailiffs, Aldermen* &c. they did appear by Warrant of Attorney, and *one of the Bailiffs named* in the Warrant *did not appear, nor agree to it*; It was holden by the whole Court, that *the Appearance of the major* or greater *Part being recorded was ſufficient*; And it was alſo holden per curiam, that altho' the *Warrant of Attorney was under another Seal than their Common Seal*, yet being under Seal, *and recorded*, it cannot be annulled. Godb. 439. pl. 506. The Bailiffs &c. of Yarmouth v. Cowper.

(X) Abatement of Writ.

1. IN *Covenant by the Mayor and Commonalty of Lincoln againſt the Mayor, Bailiffs, and Commonalty of Derby*, the *Writ was general*, according to the Deed, that the Defendants had covenanted with the Plaintiffs &c. And the *Deed was, that the Mayor and Commonalty of Lincoln ſhould be quit of Murage, Pontage, Cuſtom, and Toll within the Vill of Derby, of all Merchandiſes* &c. The *Count recited the Covenant according to the Deed, but at the End* of the Count *it was ſhewn, that ſome certain ſingular Perſons of Derby took Toll*, &c. of certain Burgeſſes of Lincoln, contrary to the Covenant &c. yet adjudged a good Writ. Thel. Dig. 84. Lib. 9. cap. 5. S. 26. cites Trin. 48 E. 3. 17. and ſays See 30 E. 3. 20.

2. In *Treſpaſs upon the Caſe againſt the Maſter of an Hoſpital*, the *Writ was, that* where *the Defendant by reaſon of his Tenure ought to cleanſe a Ditch ipſeque et omnes alii prædictam Tenuram prius habentes, præd' foſſam reparere et mundare debuerunt et conſueverunt de temps dount* &c. And it was abated for want of good Title; For ſuch *Preſcription* is not good, for it *ſhould be in the Defendant and his Predeceſſors, or in them and thoſe whoſe Eſtate* &c. Thel. Dig. 106. Lib. 10. cap. 14. S. 16. cites Mich. 12 H. 4. 7. Thel. Dig. 172. Lib. 11. cap. 53. S. 6. cites S. C.

3. One by Name of *Chaplain of the Chantery of T.* was received to maintain Writ of Entry, *without ſaying* in his Writ *that the Chantery was in any Church or Chapel.* Thel. Dig. 37. Lib. 3. cap. 9. S. 3. cites Paſch. 12 H. 4. 19.

4. *Scire Facius* upon Recognizance of 100 l. in the Exchequer *againſt J. Abbot of P.* the Sheriff return'd him Warned, and *came R. Abbot of P. and ſaid that J. Abbot was and is depoſed* long before the Writ *and he is Abbot*, & non Allocatur. For he has no Day in Court, and alſo he is at no Miſchief, for if Execution be made of his Goods he may have Treſpaſs, by which Judgment was given againſt J. Abbot. Br. Miſnoſmer. pl. 2. cites 2 H. 6 5.

5. Where a *Recovery* was had *upon Compoſition in* Writ of *Covenant againſt the Commonalty of Shrewsbury*, and *afterwards the King makes Bailiffs there*, a Writ of *Scire facias was ſued out of this Recovery by Name of the Commonalty, leaving out the Bailiffs*, and it was held per Cheney, that the Writ was good, but Hankford held the contrary, and that the Bailiffs ought to be named. Thel. Dig. 54. Lib. 6. cap. 12. S. 7, 8. cites Trin. 2 H. 6. 9. and ſays, that Fitzh. abridges the Opinion of Hank. to be the beſt, Brief 7.

6. It was held by Martin, that Writ brought *by an Abbeſs by Name of Abbatiſſæ Minoriſſarum de B.* is not good, *without ſaying* Abbatiſſæ *Domus Minoriſſarum* &c. Thel. Dig. 37. Lib. 3. cap. 9. S. 4. cites Hill. 3 H. 6. 28.

7. But

7. But it was held, that a *Writ* brought *by Name of John Abbot of Glaſtenbury* ſhould be good *without ſaying* Abbot *of the Church of our Lady of Glaſtenbury.* Thel. Dig. 37. Lib. 3. cap. 9. S. 4. cites Paſch. 4 E. 4. fol. 8.

8. If a *Prior brings 2 Writs*, the *one by Name of the Prior of St. A. of B.* and the *other by Name of the Prior of St. A. near B.* the one of the Writs ought to abate. Thel. Dig. 38. Lib. 3. cap. 9. S. 6. cites 15 H. 6. Brief 74.

9. It was ſaid by Newton, that an *Abbot* ought to bring his Writ *by his very Name of Foundation.* Thel. Dig. 37. Lib. 3. cap. 9. S. 5. cites Mich. 21 H. 6. 4. and that ſo it was held Mich. 1 E. 4. 7. where he is Plaintiff, that he *cannot ſay, that he is known by the one Name, and by the other, or by diverſe Names.* But adds *Quære*, if he may maintain his Writ *by ſaying that he and his Predeceſſors have uſed Time out of mind to implead by diverſe Names*, and ſays See Trin. 9. E. 4. 21.

10. The Writ was *againſt Præpoſitum & Scholares Eccleſiæ Beatæ Mariæ & Sancti Michealis in Canterbury*, where their Name was to be impleaded by Grant of the King *Præpoſitum & Scholares &c. de Canterbury*; Videlicet, *(in)* put in lieu of *(de.)* And it was held, that the Writ ſhould abate, and ſhould not be amended. Thel. Dig. 54. Lib. 6. cap. 12. S. 17. cites Mich. 15 E. 4. 17.

11. In Debt it was agreed, that of Mayor and Commonalty it is no Plea that the Mayor is *not of ſound Memory*, nor *Excommunication* in the Mayor is no Plea in Action by the Mayor and Commonalty, and *Outlawry*, or *Villeinage* in the Mayor is no Plea. Br. Nonabilitie, 37. cites 21 E. 4. 12. 13. 67. 69.

12. *Action* brought *by the Dean and Chapter* of W. the Defendant ſaid, that the *Dean died the Day of the Writ purchaſed*; Judgment of the Writ; and per tot. Cur. if the Dean dies, and *another is choſen Dean before the Day in Court*, and the *firſt Dean not named by his proper Name*, but named Dean, the Writ is good. Br. Corporations, pl. 64. cites 21 E. 4. 15.

13. *Otherwiſe* it ſhall be *if no Dean was at the Day in Court* when the Defendant pleaded. Br. ibid.

14. *And* it was ſaid clearly, that *if* the Dean had been *named by the Name of Baptiſm*, and died, pending the Writ, there the Writ ſhall abate, though another was elected before the Day in Court. Br. Ibid.

15. If *Mayor and Commonalty bring Action*, Outlawry was pleaded in the Mayor, Judgment if he ſhall be anſwered it is no Plea; For the Action is brought by Corporation, and the Outlawry is againſt him in his natural Body. Br. Nonabilitie, pl. 53. cites 21 E. 4. 14.

16. *In Action by a Corporation or natural Body Miſnoſmer* of the one or the other goes but to the Writ, *but* to ſay that *No ſuch Perſon* in Rerum Natura, or *No ſuch Body Politick*, this is in Bar; For if he be miſnamed, he may have a new Writ by the right Name, but if there be no ſuch Body Politick, or ſuch Perſon, then he cannot have Action. Br. Miſnoſmer, pl. 73. cites 22 E. 4. 34.

17. A *Corporation diſtrain'd in their proper Names*, and therefore in Replevin brought the Writ was adjudg'd naught; For a Corporation as Mayor and Commonalty *cannot diſtrain* in their own Perſons, *but by their Bailiff.* Brownl. 175. Trin. 13 Jac. The Maſter and Fellows of Emanuel College in Cambridge.

(Y) Abate-

(Y) Abatement of Writ. For Variance.

1. IN Debt, the Writ was Præcipe, *W. W. Prior of the Houſe of the St. Mary, and St. Thomas the Martyr De novo Loco juxta Gilford in the County of Surry*, and the Obligation *was*, *we R. A. Prior of the Priory Novi Loci juxta Guilford in the County of Surry, and Covent of the ſame Place.* Pole demanded Judgment of the Writ for the Variance; For it ſhould be *Priory* according to the Obligation, and *not Houſe*; But per Priſot, all is of one Effect, and the Writ ſhall be according to their Foundation; But Pole ſaid, yet it ought to accord with an *Alias Dictus*; but per Priſot, this need not be, for the Succeſſor nor the Plaintiff are not eſtopp'd, and therefore anſwer; Quod Nota, that *Variance in Name of a Corporation* ſhall not loſe the Obligation, *if it be of one and the ſame Effect.* Br. Variance, pl. 80. cites 28 H. 6. 8.

2. In *Treſpaſs by the Mayor and Bailiffs of Oxford*, the Defendant ſaid, that they are *incorporated by Name of the Mayor and Burgeſſes* of Oxford &c. and not &c. and held a good Plea, per Brian; But Wood was of Opinion, that it is *not good without ſhewing Letters of the Incorporation.* Thel. Dig. 124. Lib. 11. cap. 5. S. 3. cites Hill. 13 H. 7. 14.

(Z) Things done to, or by the Head, or any Members of a Corporation. In what Caſes it ſhall be ſaid done in the Politick or in their Natural Capacities.

1. IF I *give* 20 *l. to an Abbot to pray for the Soul of my Father*, he *has this Money in his own Right*, and not in Right of the Houſe, and if *he waſtes it, the Ordinary cannot depoſe him* for this Cauſe. Br. Depoſition, pl. 4. cites 9 E. 4. 34. Per Moyle J.

2. A Corporation *cannot be beaten* in their Corporate but in their Natural Body; nor a Corporation *cannot beat* another, *nor do Treaſon or Felony* in their Corporation, and Corporation *ſhall not be impriſon'd for denying their Deed, nor* for *Diſſeiſin with Force* &c. *nor Forejure the Realm.* Br. Corporation, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

3. If a *Mayor is impriſon'd touching his Office, As for a Bond made by him and the Commonalty*, this is an Impriſonment to him *as Mayor.* Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

4. *And where the Corporation ought to chuſe a Mayor annually ſuch a Day under Pain of* 10 *l.* and the *Mayor is impriſon'd*, ſo that they cannot obſerve the Day, *by which they loſe the Penalty*, or if they ought annually to appear in the Exchequer ſuch a Day to account to the King, under Pain of 10 l. and the Mayor is impriſon'd, ſo that he cannot obſerve the Day, by which they loſe the 10 l. the *Corporation ſhall have Action of this Impriſonment*, and ſo the Plea good. Br. ibid.

5. Dureſs cannot be to a *Body Politick*, but it may be *to a Mayor* to do a Thing appertaining to his Office; by the beſt Opinion; For he is the Head of the Corporation. Impriſonment of the Head of a Natural Body in the Pillory is Impriſonment of all the Body; For it is intire. Br. Dureſs, pl. 18. cites 21 E. 4. 8. 14. 15.

(A. a) Things done by the Head without the Body's joining. In what Caſes they ſhall ſtand good.

1. IF an Abbot or Prior *levies a Fine of Land of the Right of the Houſe*, this ſhall bind them for ever. Br. Abbe, pl. 21. cites 46 E. 3. 13.

Jenk. 162, 163. pl. 9. cites S. C. and ſays, the Mayor and Commonalty are one indiviſible Body;

2. The Sum of 100 *l. per Ann. is due to the Mayor and Commonalty of Southampton out of the King's Cuſtoms. Acquittance by the Mayor only* is not good, by all the Juſtices; And yet becauſe he is the *Head of the Corporation*, and there were 100 Preſidents ſhewn of the like Matter in time paſs'd, therefore the Acquittance of the Mayor was allow'd; Quod Nota. Br. Corporations, pl. 87. cites 2 R. 3. 7.

The Mayor, as Mayor, can do nothing regularly, for he is the Head of the Corporation aggregate, and is only a Part of it; but *Uſage and Precedents are not to be neglected in Things indifferent, or which are not Mala in ſe.*

(B. a) Proceſs againſt Corporations.

Br. Corporations, pl. 30. cites S. C.

1. DEBT was brought *againſt the Society of Lumbard Merchants* of Florence, and the *Sheriff diſtrained 2 Lumbards, who came in Perſon*, and prayed their Appearance to be recorded to ſave their Iſſues *as diſtinct Perſons, but not as of the Society of Lumbards*, & ideo non Allocatur, but that they ſhall be put to their Remedy againſt the Sheriff of London, by a general Action of Treſpaſs; *for where a Corporation is impleaded, they ought not to diſtrain any private Perſon*; Quod Nota. Br. Treſpaſs, pl. 135. cites 19 H. 6. 80.

Ld. North ſaid, he did not ſee how a Company that had no Eſtate could be compell'd to appear; upon which it was urged, that the Plaintiff might take out a *Diſtringas* againſt the Company, and have it *return'd Nihil*, and ſo get a *Sequeſtration* againſt them, and then by the Courſe of the Court

2. Upon a diſmiſſion of a Bill in Chancery, and that Diſmiſſion enroll'd, an Appeal was to the Lords, ſetting forth, that in the ordinary Courſe of Proceedings the Chancery could not relieve the Plaintiff againſt the Defendants, they being a *Company*, and ſerv'd with Proceſs would not appear, they *having nothing to be diſtrain'd by*. The Defendants being ſo many of the Members of the Company as were particularly named, did put in an Anſwer, Plea, and Demurrer, and the Company, tho' often Summoned, did not appear. Their Lordſhips ordered, that the Diſmiſſion ſtand reverſed, and that the Ld. Chancellor &c. retain the Bill, and that the Court of *Chancery ſhall iſſue forth uſual Proceſs of that Court, and* if Cauſe be, Proceſs of *Diſtringas thereupon againſt the ſaid Corporation*, provided the ſaid Proceſs be *ſerved, one Month before the Return thereof*; *And if upon Return* of the ſaid Proceſs the ſaid *Corporation ſhall not* file an Appearance, or ſhall appear and not *anſwer*, the ſaid *Bill ſhall be taken Pro Confeſſo*, and a Decree ſhall thereupon paſs. But in Caſe the ſaid Corporation ſhall appear and anſwer within the Time aforeſaid, then the Court of Chancery ſhall proceed to examine what the Plaintiff's juſt Debt is, and ſhall decree the ſaid Company to pay ſo much Money as the ſame ſhall appear to amount unto, with reaſonable Damages. And in Caſe the Corporation ſhall not pay the Sum decreed within 90 Days after the Service of the ſaid Decree upon their Governour, Deputy-Governour, Treaſurer, Clerk

Clerk or Secretary for the Time being, then the Ld. Chancellor, or Ld. Keeper for the Time being, ſhall order and decree, that the Governour, or Deputy-Governour, and the 24 Aſſiſtants of the ſaid Company, or ſo many of them as by the Tenor of their Charter do conſtitute a Quorum for the making of Leviations upon the Trade or Members of the ſaid Company, ſhall within ſuch Time, as by the Ld. Chancellor of Keeper ſhall be thought fit, make ſuch a *Leviation upon every Member* of the ſaid Company as is to be contributary to the publick Charge, as ſhall be *ſufficient to ſatisfy the ſaid Sum to be decreed* to the Plaintiff in that Cauſe, and to collect and levy the ſame, and to pay it over to the Plaintiff as the Court ſhall direct; And ſuch a Leviation is to be put in Writing, and ſigned with the Hand of the Governour, Deputy-Governour, and Aſſiſtants of the aforeſaid Company for the Time being, and ſo many of them, as by the Conſtitution of the ſaid Charter, do make a Quorum, ſhall not make or return ſuch Leviations as aforeſaid, the Ld Chancellor, or Ld. Keeper, may iſſue *Proceſs of Contempt* againſt them, as is uſual againſt Perſons in their natural Capacity; and if by the ſaid Time ſo to be limited by the ſaid Court of Chancery, the ſaid *Money ſo* to be *aſſeſſed*, ſhall *not be paid*, then, and from thenceforth, every Perſon of the ſaid Company upon whom ſuch a Leviation ſhall be made to be liable in his Capacity to pay his Quota or Proportion aſſeſſed; And the Ld. Chancellor, or Ld. Keeper, is to order or decree, that ſuch Proceſs ſhall iſſue againſt any ſuch Member ſo refuſing or *delaying to pay his Quota* or Proportion, as is uſual againſt Perſons charged by the Decree of the ſaid Court for any Duty in their ſeveral Capacities; And if the Total ſo returned and filed with the Regiſter, ſhall not amount to ſo much as ſhall be ſufficient to ſatisfy the Sum decreed, with reſpect had to ſuch Perſons as ſhall make it appear that they are overcharged, or ought not to be charged at all, then the ſaid Ld. Chancellor, or Ld. Keeper for the Time being, may from Time to Time order that a *new Leviation* be made and returned into the Regiſters of the Court of Chancery, of ſuch Sum as ſhall be ſufficient *by way of Supplement* for that Purpoſe, to the Payment whereof *every individual Perſon is to be bound* in ſuch Manner as aforeſaid Chan. Caſes 206, 207. Trin. 23 Car. 2. Dr. Salmon v. the Hamborough Company.

the Plaintiff need not bring them to a Hearing: Vern. 122. Hill. 1682. in Caſe of Curſon v. the African Company. —— S. C & S. P. cited 2 Vern. 396. in Caſe of Harvey v. African Company.

3. An *Attachment* will not lie againſt a Corporation. 3 Keb. 230. pl. 8. Mich. 26 Car. 2. B. R. in Caſe of Morgan v. the Corporation of Carmarthen.

4. *After a Decree* againſt a Corporation *for a Sum of Money, and a Diſtringas* iſſued againſt them, Ld. North was of Opinion, that Execution was to go without their being further heard; As in the Caſe of a Judgment at Law. 2 Vern. 395. Mich. 1700. Harvey v. the Eaſt-India Company.

After Service of a Writ of Execution of a Decree againſt a Corporation, the next Proceſs is a Diſtringas, and after that a Sequeſtration, which being once awarded, they can never after come and pray to enter their Appearance, as they might have done on the Diſtringas, which iſſues for that very Purpoſe, to compel them to appear; but the appearing being paſt, the Proceſs muſt go on, becauſe the Appearance being only in Favour of Liberty, can be of no Service to a Corporation which cannot be committed. Chan. Prec. 128. pl. 115. Mich. 1700 Harvey v. Eaſt-India Company.

5. *But* the *Diſtringas in Proceſs* againſt a Corporation is to anſwer as well the Contempt as the Bill or Complaint, but *when upon a Decree*, it is ad Comparendum & Solvendum, and the Court refuſed to grant any ſtay of Proceſs, or for the Defendants to be examined. 2. Vern. 396. Mich. 1700. Harvey v. the Eaſt Ind. Comp. —— And Ld. North ſaid, that a Sequeſtration iſſued on the Return of the firſt Diſtringas 24 Car. 2. in the Caſe of Dr. Huſſey v. the Grocer's Company. And alſo in the Caſe of Cholmley v. the Grocer's Company.

(C. a) Pleadings and Proceedings.

1. IN *Annuity* it was held, that if an *Abbot with aſſent of the Covent grants an Annuity without naming himſelf by Name of Baptiſm*, that in Action againſt his *Succeſſor* he *ought to ſurmiſe in the Count the Name of* him who was *Abbot at the Time of the Grant*. Thel. Dig. 84. Lib. 9. cap. 5. S. 24. cites 20 E. 3. Annuity 33. and that ſo agrees 12 H. 4. 5.

2. Where there is a *Covenant between two Vills incorporated, that the one ſhall ſuffer the other to be quit of Toll*, and after their *Common Officer takes Toll*, this is a Breach of the Covenant; *Contra* if it be done *by another particular Perſon*. Br. Corporations, pl. 74. cites 48 E. 3. 17.

3. *Annuity* was *granted to J. M. by a Corporation, by Name of Proveſt of the College of C.* and *Action was brought by Name as above, without Name of Baptiſm*, and good. But per Hull, he *ought to declare the Name of the Grantor in his Count*. Br. Corporations, pl. 18. cites 12 H. 4. 5.

4. *So* if *Abbot with the Aſſent of the Covent is bound to me in* 20 *l. without other Name*, I ſhall have *Action againſt the Succeſſor*, and declare the Name of the Obligor certain in the Count. Br. Corporations, pl. 18. cites 12 H. 4. 5.

5. *So* in Writ of *Entry ſur Diſſeiſin made to the Predeceſſor*, the Name of the Diſſeiſee ſhall be expreſs'd in the Writ; Per Thirn. Br. Ibid.

6. Scire Facias *againſt the Commonalty of S.* who *ſaid that the King had made Bailiffs there*; Judgment of the Writ, not naming the Bailiffs, and a good Plea. Br. Brief, pl. 493. cites 2 H. 6. 9.

7. Writ of Waſte by an Abbot ſhall be *Ad Exæredationem Domus*. Br. Abbe, pl. 2. cites 9 H. 6. 25.

8. In *Debt againſt an Abbot upon the Deed of his Predeceſſor*, becauſe the Predeceſſor *pledged a Tablet of the ſaid late Abbot, and his Abby aforeſaid, to the Plaintiff for* 40 *l.* of which the *Predeceſſor re-paid* 20 *l. and he delivered to him the Tablet again, and took the Obligation of the Predeceſſor himſelf*, and *averr'd that the Tablet came to the Uſe of the Houſe*, and the Count good by Judgment, notwithſtanding that he ſaid *Goods of the Abbot and Abby*; for when this is counted or pleaded of an *Abbot* who *is dead*, the Count ſhall be ut ſupra, and the Pleading in like Manner; *But if* it be *of an Abbot who is Abbot, and alive*, it ſhall be *Goods of the Abbot only*; for during his Life the Property is in him, and after his Death the Property is in the Houſe; Quod Nota Diverſity; and per Rolfe, Count ſhall not abate *for Surpluſage*. Br. Count, pl. 10. cites 9 H. 6. 25.

9. The *Dean and Canons* of Windſor *ſued* Writ of *Treſpaſs*, and the *Writ was Ad Reſpondendum Decano & Canonicis* &c. *without ſhewing how they are ſo incorporated*. Thel. Dig. 20. Lib 1. cap. 22. S. 16. cites Trin. 18 H. 6. 16.

10. *Debt againſt an Abbot, and counted that* T. late Abbot, *Predeceſſor* &c. *promiſed to him* 10 *l. of which* 5 *l. was for Bread and Beer, and* 5 *l. for Defence of a Suit which was pending againſt the Abbot*; and the Count good, notwithſtanding he did *not ſay that the Bread and Beer came to the Uſe of the Houſe, nor that the Suit was againſt the Abbot*; For this ſhall be intended; But by all the Juſtices, the beſt Count was to ſay generally, that it came to the Uſe of the Houſe; and after the Count was awarded good. Br. Abbe, pl. 9. cites 22 H. 6. 56.

14. *Scire*

11. *Scire Facias againſt L. B. Warden of the College of C. in Canterbury, and the Scholars of the ſame*, were ſued by the Succeſſor of a Parſon upon Recovery of an Annuity, and was brought in the County of Norfolk, and the *Sheriff return'd quod Scire Feci L. B. and Scholaribus* &c. and upon this *L. B.* came, and *ſaid that he is the ſame Perſon* who was warned, *and* ſaid *that he is not Warden, nor was not the Day of the Writ purchas'd, nor ever after*; Judgment of the Writ; And there it is agreed, that the *Scholars need not appear nor plead*, for all is one Corporation; And if the Head be not warned, the Body is not warned; And the Iſſue was accepted. But per Moyle, this is a ſtrange Iſſue, for L. B. ſaid, that he is not Maſter; Per Wangford, if the Iſſue be found for the Plaintiff, he ſhall have Judgment to recover the Annuity; But Brook makes a Quære thereof, for the Scholars who are Part of the Corporation, are not Parties; But if the Iſſue be found for the Defendant, it ſeems clear that the *Writ ſhall abate*, for he is named L. B. Warden in the Writ, and therefore it ſeems it had been better for the Plaintiff to have ſued his Writ againſt the Warden and Scholars &c. without proper Name of the Maſter, and then Scire Feci Magiſtro & Scholaribus return'd had been good. Br. Corporations, pl. 6. cites 34 H. 6. 14. 49.

12. Where the *Number of Brothers and Siſters appear in the Foundation*, this ſhall be ſhewn certain in the Pleading, and the *dying ſeiſed of the Predeceſſor is good Cauſe to enter, and juſtify upon the 5 R. 2.* Ubi Ingreſſus non datur per Legem. Br. Corporations, pl. 7. cites 34 H. 6. 27.

13. *But this is no Title in Aſſiſe*, and he ought, where the Maſter dies, to *ſhew How the other was elected*, and made Maſter &c. *before he enter'd, and that tunc intravit* &c. Br. Ibid.

14. Annuity by the Dean and Chapter of Stoke againſt the Maſter of the Hoſpital of Saint Mary-Overs, Parſon of D. and *counted of* 10 *l. Arrears of an Annuity of* 40 *s. and that J. late Dean of the ſaid Chapter, and then Chapter, Predeceſſors of the now Dean and Chapter, were ſeiſed of the ſaid Annuity by the Hands of one H. late Parſon of the Church aforeſaid, Predeceſſor* &c. *and that the aforeſaid late Dean and Chapter, and all his Predeceſſors, were ſeiſed &c. by the Hands of the aforeſaid H. late Parſon of the Church aforeſaid, and by the Hands of his Predeceſſors, Parſons of the Church aforeſaid* Time out of Mind, *until the 26th Year of the now King, and the aforeſaid late Dean died, and the aforeſaid now Plaintiff was elected, and made Dean* of the Church aforeſaid &c. *and alleged Seiſin at S. aforeſaid, to the Damage* &c. Choke demanded Judgment of the Count, becauſe he counted that the Dean and Chapter which now are, and the late Dean and Chapter then Predeceſſors &c. where the *Chapter cannot have Predeceſſors nor Succeſſors, for it is perpetual*, ſo that the Dean may have Predeceſſor, but not the Chapter; & non allocatur; for they are incorporated by this Name, and therefore they *ought to preſcribe by the Name by which they are incorporated*, and the Preſcription was awarded good, that the Dean and Chapter, and their Predeceſſors, Time out of Mind, were ſeiſed &c. notwithſtanding that they *did not ſay* (*then Dean and Chapter*) of the Church aforeſaid, for it ſhall be intended that their Predeceſſors were Deans. Br. Preſcription, pl. 42. cites 39 H. 6. 13. Thel. Dig. 20. Lib. 1. cap 22. S. 22. cites S. C. and ſays, See Paſch. 12 H. 7. 17.

15. *So of a Prior*, and this Ex Parte of him who makes the Preſcription, or claims by the Preſciption. Ibid.

16. *But otherwiſe* it is *of him who ſhall be bound by the Preſcription*, as here it is to bind the Parſon, that they were ſeiſed by the Hands of the Rector, his Predeceſſor &c. they *ſhall ſay, then Parſons or Rectors* of the Church aforeſaid &c. for they are to be bound &c. Ibid.

17. In Replevin it was ſaid by all the Juſtices, except Priſot, that the *Abbot is none of the Covent*, and this is well proved by Moile, by the Writ of Sine Aſſenſu Capituli, and Aſhton ad idem; For *in a Deed ſuppoſed by the Abbot and Covent*, it is a *good Plea that Not the Deed of the Abbot*, not denying that it is the Deed of the Covent; *And* it is a good Plea, that *Not the Deed of the Covent*, not denying that it is the Deed of the Abbot, and therefore the Abbot is not Parcel of the Covent; But per Priſot, the Abbot is Part of the Covent, and the Head or Principal of the Covent. Br. Abbe, pl. 12. cites 39 H. 6. 36. and 50

18. The *Abbot* of Colcheſter, *Parſon of a Church*, *claim'd an Annuity as pertaining to the ſaid Rectory*; he *ought to preſcribe in Right of the Rectory*, and not that he and his Predeceſſors, Abbots, have had it Time out of Mind; becauſe of Parcels and Things pertaining to the Rectory they ought to claim in Right of the Rectory. Pl. C. 503. b. cites 49 H. 6. 16.

19. *One of the Commonalty* cannot *juſtify for Rent* due to the Commonalty, but the Corportion itſelf ſhall juſtify, and no ſingle Perſon of them. Br. Corporations, pl. 54. cites 7 E. 4. 14.

20. In Treſpaſs the Defendant pleads *Leaſe* for Years of the Maſter and Confreres of a *College*, and the Leaſe was *Sigilla Noſtra appoſuimus* inſtead of ſaying the Common Seal, and yet held good, and it ſhall be intended their Common Seal. Br. Faits, pl. 70. cites 11 E. 4. 4.

21. *Debt upon Arrear of Account by the Mayor and Commonalty of S.* againſt the Executor of T. P. their Receiver, *and counted that Auditors were aſſigned by the aforeſaid Mayor and Commonalty*; Catesby ſaid one T. is now Mayor, and was the Day of the Writ purchas'd, which T. and the Commonalty, did not aſſign Auditors, and no Plea, though they did *not ſhew who was Mayor at the Time of the Aſſignment*; For if the Predeceſſor aſſign'd &c. yet the Succeſſor and the Commonalty ſhall have Action, and Count *generally* that the Mayor and Commonalty &c. notwithſtanding theſe Words *aforeſaid*, *Mayor and Commonalty*, and that the Count above was good, and is the common Courſe, which has all Times continued, and if the Mayor dies, pending the Writ, and another is choſen, yet the Writ, as above, remains good. Br. Corporations, pl. 56. cites 12 E. 4. 9. 10.

22. *So* of *Dean and Chapter*, becauſe thoſe Actions by Cuſtom have been uſed for all the Body. Br. Ibid.

23. *Contra of Abbot or Prior*, for *thoſe Actions are by the Head of the Body only*. Br. Ibid.

24. In *Treſpaſs* the Defendant *juſtified*, *becauſe the Freehold was in the Dean and Chapter*, *and he as Servant*, *and by their Command entred*, and Exception was taken, becauſe he did *not ſhew the Name of the Dean*, viz. the proper Name. Le. 307. Arg. cites * 13 E. 4. 8.

* Br. Corporations, pl. 58. cites S. C. that in a particular Patent made to the Mayor, Aldermen and Commonalty, it was held, that a Man in pleading ſhall ſhew who was Mayor at the Time of the Grant, but not who were Aldermen and Commonalty; But Choke J. ſaid, that though it is uſual to ſhew who was Mayor at the Time &c. for the better Certainty, yet he had known it adjudg'd when ſuch Patent had been pleaded generally, it had been awarded good; becauſe it ſhall be taken that there was a Mayor at the Time of the Grant; but if there was no Mayor the Grant was void.——Br. Pleadings pl. 161. cites S. C.

25. If Dean and Chapter make a *Leaſe* thus, viz. Sciatis nos Decanum & Capitulum &c. dimiſiſſe &c. and does *not ſhew the proper Name of the Dean*, the Leaſe is void; per Littleton, Quod fuit conceſſum per Curiam. Br. Corporations, pl. 59. cites 18 E. 4. 8.

Br. Leaſes, pl. 45. cites S. C. and 13 E. 4. that by the beſt Opinion where the Dean and Chapter make a Leaſe &c. it is not neceſſary to expreſs the Dean's Name of Baptiſm.——Le. 307. Arg. cites S. C.

26. And

26. And the Law is the ſame where he *juſtifies by Commandment.* Br. Ibid.

27. *Debt by R. Alderman of the Guild of St. Mary in Boſton* againſt L. *upon a Bond made to S. N. late Alderman*, which was *to him and his Succeſſors* ; per Littleton Juſtice he ought to *ſhew how the Corporation was made* ; Contra of Abbot and Prior, or Dean and Chapter, but Guild or Fraternity cannot be made but by a ſpecial Incorporation, and per Brian it is true, for *Succeſſor cannot take Effect but there is Succeſſion*, for otherwiſe this Word Succeſſor is void. Br. Corporations, pl. 60. cites 20 E. 4. 2.

28. *For* where a Man is *bound to the Church-Wardens and their Succeſſors*, this *word Succeſſor is void*, and the Executors ſhall have the Action, for the Wardens are not incorporated ; Per Brian and Littleton Juſtice to the ſame Purpoſe, that a *Bond made to the Dean of P. and his Succeſſors* is not good to the Succeſſors, but the Executors ſhall have the Action ; *Contra* of Bond *to the Dean and Chapter of P. and their Succeſſors*, there the Succeſſor ſhall have the Action after the Death of the Predeceſſor. Br. Corporations, pl. 60. cites 20 E. 4. 2.

29. *So of a Biſhop* ; per Littleton Juſtice, and Choke Juſtce to the ſame Purpoſe, and agreed the Caſe by Brian, and that *Bond* made *to the Abbot or Prior, and their Succeſſors, omitting the Covent*, is good to the Succeſſor ; for *no other of the Corporation is able to take the Bond but* the Abbot. Br. Corporations, pl. 60. cites 20 E. 4. 2.

30. *And* that where *Chantry Prieſt* is *founded by ſuch Name and Succeſſors*, and *Land is given to him and his Succeſſors*, this is good, and the Succeſſor ſhall have it, and not the Heir. Br. Corporations, pl. 60 cites 20 E. 4. 2.

31. *But Bond* made *to him and his Succeſſors* ſhall enure to the Executors and not to the Succeſſors, by which the Plaintiff pray'd Leave to purchaſe a better Writ. Br. Corporations, pl. 60. cites 20 E. 4. 2.

32. *Debt* upon a Bond *by the Abbot* of Saint Bennet's *againſt the Mayor, Sheriffs and Commonalty of Norwich* ; the *Defendants ſaid, that A. the Abbot, and others of his Covent, impriſon'd J. H. then Mayor, in the Fleet in London, till he and the Sheriffs, and the Commonalty, made the Bond at Norwich by the Dureſs aforeſaid*, and the beſt Opinion was, that the Plea was good. Br. Corporations, pl. 63. cites 21. E. 4. 7. 12. 27. 67.

33. *And* after, fol, 27. they were compell'd to *ſhew that there was Mayor and his Name, and the Name of the Sheriffs, the Time of the Deed, and the Name of the Abbot* &c. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

34. *But* it was held by ſeveral, that if he had *ſaid that ſo many Men make the Commonalty, Chapter, or Covent, who were impriſon'd to make the Deed*, this is good ; For otherwiſe it cannot be intended that a Corporation can be impriſon'd ; And where the Mayor is impriſon'd, the Corporation ſhall not have falſe Impriſonment. But per Catesby the Plea is good ; For the Body is entire, and therefore the Impriſonment of the Mayor is the Impriſonment of all the Corporation, for he who *reſtrains my Hand*, impriſons all my Body ; So where *one holds my Feet in the Stocks* or my *Head in the Pillory*, without Authority, this is an Impriſonment to all the Body. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

35. In Action brought by any Corporation pretended or ſuppoſed, it is a good *Plea to ſay that there is not any ſuch Corporation by Name &c. in the ſame County.* Thel. Dig. 20. Lib. 1. cap. 22. S. 19. cites Mich. 22 E. 4. 37.

36. *Treſ-*

36. *Treſpaſs againſt the Mayor and Commonalty*; it is no *Plea that the Inhabitants of the ſame Vill have Common there*, for this is another Corporation. Br. Corporations, pl 48. cites 4 H. 7 13.

37. In *Treſpaſs* brought *by a Dean and Chapter*, being *Parſons imperſonee of the Church of D.* this *Diverſity* was taken, viz. that *if they demand the whole* Church of D. they *ſhall ſay* that they were *ſeiſed in Dominico ſuo ut de Feodo in Jure Eccleſiæ Cathedralis ſuæ* predictæ &c. *but if* the Demand be *of Parcel only, as of an Acre, Parcel of the Parſonage*; they ought to ſay in Jure Eccleſiæ ſuæ de D. Pl. C. 493. 503. b. Mich. 18 & 19 Eliz. in Caſe of Grendon v. the Biſhop of Lincoln.

38. *Notice* may be given to a Corporation by their Solicitor and Counſel; Per Manwood. Savil. 20. pl. 50. Paſch. 24 Eliz. Anon.

And. 272. pl. 280. S. C. but S P. does not appear. ——4 Le. 178. pl. 277 S. C. in totidem Verbis.

39. If a *Parſon pleads that he is ſeiſed*, he *ſhall ſay in jure Eccleſiæ*, for he has two Capacities, and without ſuch Words he ſhall be intended ſeiſed in his own Right; *But* if an *Abbot* pleads that he was ſeiſed, there *needs not ſuch Words*, for he has no other Capanity; *ſo* of *Dean and Chapter, Mayor and Commonalty*; per Anderſon Ch. J. Le. 153. pl. 212. Trin. 31 Eliz. C. B. in Caſe of the Scholars of All-Souls in Oxford v. Tamworth.

40. In *Ejectment* the Plaintiff declared *of a Leaſe by the Warden and Fellows* of All-Souls College. Exceptions was taken, becauſe the Plaintiff had not declar'd upon a Leaſe by the Warden and Fellows, *without naming any Name of the Warden.* The whole Court held the Declaration well enough, and Anderſon ſaid it ſtands with Reaſon, that ſince the College was incorporated by the name of Warden and Fellows, and not by any Chriſtian Name, that they may Purchaſe and Leaſe by ſuch Name without any Chriſtian Name, and may be impleaded and implead others by ſuch Name, and as the Fellows, in ſuch Caſe, need not be nam'd by their Chriſtian Names, no more ought the Warden; But otherwiſe of a Parſon, Vicar, Chauntry Prieſt. Le 306. pl. 427. Mich. 32 & 33 Eliz. C. B. Carter v. Claycole.

Le. 153. pl. 212. Trin. 31 Eliz. S. C. and the Writ awarded good. ——4 Le. 178. pl 277. S. C. in totidem Verbis.

41. A *Writ of Right* was brought *by the Warden and College* of All-Souls-College in Oxford, and the *Writ was quod clamat eſſe jus & Hæreditatem ſuam*, but did *not ſay In jure Collegii*; yet adjudged good; for when the Writ was brought by the Cuſtos & Collegium, it cannot be otherwiſe inrended than in jure Collegii, as in their Incorporation; for they had no other Capacity, and the Precedents are both ways. Cro. Eliz. 232. pl. 1. Paſch. 33 Eliz. C. B. All-Souls College v. Tamworth.

——And. 272. pl. 280. S. C. and the Writ adjudged good, and cites 10 H. 7. fol. 5. a good Caſe to their Purpoſe.

42. Pleading *quod Villa de Beverly incorporata fuit* was good enough, altho' that it be *better Pleading* to ſay *that the Mayor Burgeſſes &c. or the Inhabitants were incorporate* &c. Noy. 54. Fiſher v. Truſtlow.

Adjudged that they may grant or leaſe by

43. In pleading a Leaſe by a Dean and Chapter the Name of the Dean muſt be ſhewed. Co. Lit. 3. a.

Name of Dean and Chapter, without *ſhewing their proper Names*, and ſo may plead and be impleaded, becauſe in their Corporate Capacity they have no Name of Baptiſm, or any other Name than that by which they are incorporated; but it is otherwiſe in the Caſe of a Parſon or a Vicar; For they muſt uſe their Name of Baptiſm. 3 Salk. 103. pl. 5. Mich. 8 W. 3. Newton v. Travers.

44. An Abbot, Prior, Biſhop, Dean, Parſon, or any other *ſole Corporation* that is *ſeis'd in Auter droit, cannot diſclaim when* he is *vouched, by reaſon of Homage Anceſtrel, or in any other Caſe*, for they alone cannot devert

deveſt any Thing in Fee which was veſted in their Church or Houſe. Co. Litt. 102. b. 103. a.

45. If a Prior, Biſhop &c. *in a Quo Warranto* againſt them *for Franchiſes* or Liberties, *diſclaim*, this ſhall bind their Succeſſor. Co. Litt. 103. a.

46. If an Abbot &c. *acknowleges the Action in* a Writ of *Annuity*, this will bind the Succeſſor, becauſe he can't falſify it in an higher Action, and there muſt be an End of Suits; *But* if the Abbot *levy a Fine, or acknowlege the Action in a Præcipe quod reddat*, the Succeſſor ſhall be *bound pro Tempore, but* he *may have a Writ of Right, and recover the Land*; *But* if *in Debt upon a Bond againſt an Abbot* &c. the Abbot &c. *confeſſes the Action*, and dies, the Succeſſor ſhall not avoid Execution, though the Bond was made without Aſſent of the Covent, for he cannot falſify the Recovery in an higher Action; So it is of a Statute or Recogniſance. Co. Litt. 103. a.

47. In *Debt for Rent* by a Corporation, they *intitle themſelves by Feoffment*, and do *ſhew Livery to be executed by Letter of Attorney*; And therefore it was objected, that they cannot take unleſs by Letter of Attorney; ſednon allocatur; For all *neceſſary Circumſtances ſhall be intended* to be executed, as well as in a Feoffment made to other Perſons; and Judgment accordingly. Cro. J. 411. pl. 11. Mich. 14 Jac. B. R. Ipſwich (Bailiffs &c.) v. Martin & al'.

S, C. cited 2 Saund. 305. — Roll Rep. 404. pl. 33. S. C. but S. P. does not appear. — 3 Bulſt. 211. S. C. but S. P. does not appear.

48. *Ejectment-Leaſe* was made by a Corporation; they ſeal'd the Leaſe and *deliver'd it by their Attorney*, having a Letter of Attorney from them to deliver the ſame; Per Cur. they can't do this in any other Manner but by their Attorney; they are only to ſubſcribe and ſeal the Leaſe, and to deliver the ſame by their Attorney, having their Letter of Attorney ſo to do. Bulſt. 119. Paſch. 9. Jac. St. John's Coll. Oxon v. Lord Norris. als. Clark v. Hannes.

49. No Action lies at Common Law againſt a Dean and Chapter on a *Promiſe made by* them; becauſe a Corporation can't be bound *without Deed*, and when a Corporation is *ſu'd* in a Court of Equity, the Corporation it ſelf is not ſu'd, but *ſome particular Perſons* of the Corporation, and one may be ſu'd that was not of the Corporation at the Time of the Promiſe, and where the Promiſe was to make a new Leaſe on the Surrender of the former, and they Grant a new Leaſe to another, it was reſolv'd, that the old Leſſee had great Equity to be reliev'd. Roll. R. 82. pl. 28. Mich. 12 Jac. B. R. Frevill v Ewebank.

50. In *Debt by the Guardians and Fellows* of N. *for a Forfeiture on Breach of a By-Law*, Hobart Ch. J. that they *need not ſhew how they were incorporated*; For the Name argues a Corporation. Hob. 211. Paſch. 14 Jac. in Caſe of Norris v. Stapes.

51. A Corporation may *have ſome Things by Preſcription, and ſome by Charter*, and therefore may *uſe both Titles*. Nota. Lat. 113. Hill. 1 Car.

52. A *Leaſe* was *pleaded to be made by Dean and Chapter, but did not ſhew that the Dean and Chapter were ſeiſed in Jure Collegii, nor what Eſtate the Dean and Chapter had* in the Land; Doderidge held the Pleading ill, becauſe it might be of an Eſtate pur auter Vie. Lat. 14. Paſch. 2 Car. Newman v. Marſh.

Lat. 121. Wood and Newman v. Marſh, S C. the Court held the Pleading ill.

53. In *Covenant* brought *againſt a Biſhop on a Covenant* entred into *by his Predeceſſor*, it was *not alleg'd that he was ſeiſed in Jure Epiſcopatus*, and therefore was adjudg'd ill; For in pleading Seiſin in all ſole Corporations it ought to be pleaded in Quo Jure they were ſeiſed; but it is otherwiſe in Corporations aggregate. 2 Lev. 68. Mich. 24 Car. 2. B. R. Davenant v. the Biſhop of Salisbury.

Vent. 223. S. C. and Hale Ch. J. ſaid the old Books were, that where it is pleaded that J. S. Epiſcopus was ſeiſed, that it implied ſeiſin in Right of the Biſhoprick, which is true if it were a Corpo-

Corporation capable only in his Politick Capacity, or as Abbot &c. but in regard he might alſo be ſeiſed in his natural Capacity the Declaration for this Cauſe was held to be ill.

54. In ſecond Deliverance, the Defendants made *Cognuſance as Bailiffs to the Maſter and Governors of Chriſts Hoſpital &c. for that they are a Corporation, and ſeiſed in Fee of the Place where, in the Right of the Hoſpital*; upon Demurrer it was objected, that the Conuſance was ill, becauſe it did *not ſet forth How incorporated, nor ſay Per eorum præceptum, nor ſhew any Writing*; but adjudg'd that this Avowry is good, becauſe the Incorporation is but an Inducement to the alleging the Seiſin in them, therefore need not be ſhewn, nor need he allege any Precept in Writing. 3 Lev. 107. Mich. Car. 2. C. B. Manby v. Long.

55. A Bill was brought againſt a Corporation *to diſcover Writings*. The Defendants anſwered under their Common Seal, and ſo not being ſworn will not Anſwer in their own Prejudice. Ordered, that the Clerk of the Company, and ſuch Principal Members as the Plaintiffs ſhall think fit, anſwer on Oath, and that a Maſter ſettle the Oath. Vern. 117. pl. 104. Hill. 34 & 35 Car. 2. Anon.

Skinn. 84. Hill. 35 Car. 2. S. C. Lord Keeper ſaid, that the Proceſs againſt a Company is by Diſtringas, and not by Subpœna, and if they have no Effects there is no way to compel them to appear.

56. Bill againſt a Company, if they do *not appear*, it was ſaid the Plaintiff may take out a *Diſtringas* againſt the Company, and have it return'd *Nihil*, and ſo get a *Sequeſtration* againſt them, and then by the Courſe of the Court the Plaintiff need not bring them to Hearing. Vern. R. 121, 122. pl. 112. Hill. 1692. Curſon v. the African Company.

57. In *pleading Change of the Name* of the Corporation he ought to ſhew *How*. 3 Lev. 243. Mich. 1 Jac. 2 C. B. Adney v. Vernon.

58. A Corporation cannot appear, and therefore *cannot caſt an Eſſoin, nor enter into a Recognizance*; Per Cur. Lord Raym. Rep. 79. Paſch. 8 W. 3. Burghill v. Gibbons and the Univerſity of Cambridge.

59. An *Information* was exhibited *againſt the Bailiffs and Burgeſſes* of Yarmouth; *one* of the Bailiffs (there being 2) *appointed an Attorney to appear*, but the *other would not conſent*, and the Court was moved, that their Liberties might be ſeiſed for want of an Appearance; But the better Opinion was, that upon an Information in Nature of a Quo Warranto, which is Datum eſt Curiæ intelligi, and which is in Nature of a Perſonal Action, there cannot be a Seiſure before a Summons, (i. e.) the Liberties cannot be ſeiſed upon a Venire Facias, but upon a Diſtringas; but it is otherwiſe in a Quo Warranto, for there it is Summonitus fuit; then it was made a Queſtion, whether a Warrant of Attorney made by one of the Bailiffs was not ſufficient, becauſe the Corporation did not diſavow it, but that was determined. 3 Salk. 104. pl. 7. Anon.

60. If a *Writ* be brought *by Hugh, Prior of Coventry*, this too general, and ſhall abate, but in a Leaſe ſo made had been good. Gilb. Hiſt. of C. B. 189.

61. In the Caſe of the *South-Sea Company*, in whom the Eſtates of the late Directors are veſted by Act of Parliament, *where the Statutes of Limitations might have been pleaded againſt the late Directors, it is pleadable againſt the Company*, who ſtand but in ſuch Directors Place. 3 Wms's Rep. 143. Mich. 1732. South-Sea Company v. Wymondſell.

62. A Corporation ſhall have the *Benefit of the Statute of Limitations* as well as any private Perſon. 3 Wms's. Rep. 310. Trin. 1734. Wych v. Eaſt India Company.

(D. a) Miſnoſmer of Corporations. Pleadings.

1. THE King granted to J. N. to found a Chantry of 12 Prieſts, and that the Provoſt thereof ſhall be called *Provoſt of the Chantry of C.* and the King after brought Quare Impedit againſt him by Name of *Provoſt of the Houſe of C.* and therefore the Writ abated. Br. Corporations, pl. 21. cites 38 E 3. 14.

2. *Scire Facias againſt the Prior of St. John of Hieruſalem in England* upon a *Recovery*, which *was* [againſt the] *Prior of the Hoſpital of St. John of Jeruſalem in England*, the Writ was awarded good, becauſe it was known by the *one Name and the other*; Quod Nota, in Action againſt a Corporation. Br. Corporations, pl. 10. cites 44 E. 3. 16.

3. *Treſpaſs againſt J. Abbot of St. Mary in C.* the Defendant *ſaid, that it was founded by the Name of Abbot* of the Church and Monaſtery *of St. John's of C.* Judgment of the Writ; Newton ſaid, this is no Plea; For it may be known by the one Name and the other, and it is good in Action againſt him, and eſpecially in Treſpaſs of a Tort done by himſelf; For it was of Goods carry'd away. But if he was to bring Action, or if *Action* was brought *againſt him in Right of the Houſe*, there it ought to be named by the very Name of Foundation, by which Anſwer; Quod Nota Markham *ſaid*, that the Houſe was founded &c. and all as above, and *that they and all his Predeceſſors have impleaded and been impleaded by the Name aforeſaid, and not by the Name of the Abbot of St. John's of C. only*; Judgment of the Writ. Portman ſaid, the Abbot is *known by the one Name and the other*, priſt &c. and a good Plea, per Newton, tho' he and his Predeceſſors have been known by ſuch Name. Br. Corporations, pl. 30. cites 21 H. 6. 4.

4. Quare Impedit againſt the *Maſter of a College in Cambridge*; the Defendant pleaded, that they are incorporated by another Name; Judgment ſi actio; the Plaintiff demurr'd, becauſe he did not conclude to the Writ; And per Fitzherbert, the Plea is not good without Doubt, by which the Defendant pleaded another Plea, and ſo ſee that *miſnoſmer of a Corporation goes to the Writ*. Br. Corporations, pl. 1. cites 26 H. 8. 1.

5. *In Debt* againſt a Corporation the *Corporation ought to be named by its Right Name*; As if it be J. Prior of *Saint Peter*, and the Corporation is *Saint Peter and Saint Paul*, this is Miſnoſmer, and cannot be aided after Imparlance, for it is Parcel of his Name. Br. Corporations, pl. 8. cites 35 H. 6. 5.

6. Obligation was made Abbati Monaſterii de M. extra Muros Eborum. In Debt brought the Writ was, Quod reddat Abbati Monaſterii de M. Eborum, leaving out (Extra Muros) and held good, notwithſtanding the Variance. Gouldsb. 122. cited by Gawdy as 5 E. 4. 20.

7. Where *Mayor and Commonalty are ſued by another Name*, they may make *Attorney by Special Warranty by their very Name* of the Corporation, and ſo the Attorney *ſhall plead Miſnoſmer*, and Corporation *cannot appear but by Attorney*, becauſe the Court cannot know it all appear or not, if they appear in Perſon; Per Brian & tot. Cur. Br. Corporations, pl. 63. cites 21 E. 4. 7. 12. 27. 67.

8. *Annuity againſt the Dean and Chaplains of the King's Free Chapel of St. Stephen Weſtminſter*; *Attorney appear'd* for them, and made Defence, *and imparl'd, and* at the Day *ſaid that they were founded by name of Dean and Chapter of the Free Chapel Royal of St. Mary and St. Stephen Protomartyr*, and the Opinion of all the Juſtices was, that they ſhall be eſtopp'd to plead

plead it, and this ſeems to be by Reaſon of the Attorney, and Imparlance, for it is contrary to his Warrant. Br. Corporations, pl. 71. cites 15 H. 7. 14.

9. Treſpaſs by J. Abbot of R. the Defendant ſhew'd how he fail'd of his Name of his Corporation. Markham Ch. J. ſaid, Known *by one and the other*, or Suit by Name known *is no Plea for the Plaintiff*, for he ought to know his proper Name; *But* if the *Defendant* be named by the Plaintiff by Name known, tho' the Defendant be Corporate, this ſuffices. Br. Corporation, pl. 82. cites 1 E. 4. 6. and 25 H. 8. the Juſtices of C. B. agreed this in Caſe of a Corporation. But Quære, if there be not a *Diverſity between actions Real and Perſonal.* Br. Corporation, pl 82.

10 Rep. 122. b S C. reſolv'd accordingly. —— Where a Man makes an *Obligation to a Corporation*, they ſhall *declare by their right Name*, and allege that the Obligation was made to them by the other Name.

10. An action of *Debt* on a Bond was brought againſt one P. and it was (*ad reſpondendum Majori Burgenſibus de Linn Regis in Comitatu Norfolciæ*) P. pleads that it was *not his Deed*; and a ſpecial Verdict was found, that the Mayor and Burgeſſes were *incorporated by the Name of Majores & Burgenſes Burgi de Linn & non per aliud*; And whether the *Omiſſion of* this *Burgi* ſhould bar the Plaintiff, was the Queſtion, and Judgement was given by Coke, Warburton, and Nichols, for the Plaintiff; for Coke ſaid, if the *eſſential Part* of the Corporation was *named* it *was ſufficient*, and in this Caſe the Mayor and Burgeſſes was one eſſential Part, and Linn Regis was another eſſential Part, and thoſe two were duly expreſſed, and ſufficient to maintain the Action; and Coke ſaid, that thoſe Words (Et *non per aliud*) ſhall be *intended* to be *Non per aliud Senſu & non Litera*; and of the ſame Opinion were the other Judges there. Brownl. 57, 58. Mich. 10 Jac. Lynn Regis (Mayor &c.) v. Pain.

G Hiſt of C. B. 179. cap. 17.

11. In an *Act of Parliament* Miſnoſmer of a *Corporation*, when the expreſs Intent appears, ſhan't avoid the Act no more than in a Will, for Parliament, *Teſtament* and *Arbitrament*, are to be taken according to the Minds and Intentions of thoſe that are Parties to it; and therefore when the Deſcription of a Corporation in an Act of Parliament, or a Will, is ſuch, that the true Corporation intended is apparent, and it is not poſſible to be intended of any other Corporation, tho' the true Name of Corporation (which is requiſite to be expreſs'd in Grants and Deeds) be not preciſely purſu'd, yet the Act of Parliament and Will ſhall take Effect. 10. Rep. 57. b. Trin. 11 Jac. Chancellor &c. of Oxford's Caſe.

12. A Corporation *by Preſcription* may have *ſeveral Names by Reputation*; as if they are called by one Name, tho' it is not exactly the Right Name, yet if it *ſuffices to deſcribe the Perſons* they muſt anſwer the Writ Arg. 11 Mod. 67. pl. 9. Mich. 4 Ann. B. R. in Serjeant Whitacre's Caſe.

New. Abr. 502. in totidem Verbis.

13. The Names *of Corporations* are not arbitrary Sounds meerly ſo individuiative, but *have a certain and ſignificant Meaning*; and if that be kept to, tho' the Words and Sillables be varied, yet the Body Politick is very well named, for then there is enough ſaid to ſhew that there is ſuch an artificial Being, and to diſtinguiſh it from others, G. Hiſt. of C. B. 181 cap. 17.

14. Upon Error out of C. B. upon a *Qua. Imp. by the Chancellor and Scholars of the Univerſity of Cambridge* againſt the Arch Biſhop &c. upon the 3 Jac. 1. cap. 5 diſabling Popiſh Recuſants Convict from preſenting &c. and veſts ſuch Preſentations in the *Chancellor and Scholars* of the two Univerſities reſpectively. Defendant had pleaded in Abatement, that the *Incorporation was by the Name of Chancellor, Maſters, and Scholars*

Scholars &c. and ſo they had ſued by a wrong Name. It was inſiſted for the Plaintiff in Error, that the Name of a Corporation was like the Name of Baptiſm, and it was debated, whether the Act of Parliament veſted this Right in them by the Name of Chancellor and Scholars, was an *incorporating them by ſuch Name, Quoad this particular Purpoſe*, or whether it operated only by way of *Deſcriptio Perſonæ*, as in a Deviſe, and not by way of incorporating them. Per Parker Ch. J. the Declaration ſets forth the Act of Parliament as an Authority to ſue by that Name, which puts it on the Defendant to ſhew ſome ſpecial Matter to avoid it, as the *acceptance of another Charter by another Name* ſubſequent to the Statute; Per Powis ſenior, Chancellor and Scholars is ſuch a Name, as comprehends the whole Univerſity, both Head and Members; per Eyre and Powis junior J. non ſequitur, that what will be ſufficient to amount to a Deſcriptio Perſonæ to enable a Perſon to take, will be ſufficient for him to ſue in. Adjornatur. 10 Mod. 207. B. R. Cambridge Univerſity v. Vavaſor, and Crofts, and Arch Biſhop of York. Hill. 12 Ann. B. R.

For more of Corporations in General, See **By-Laws. Grants. Mandamus. Succeſſor.** And other Proper Titles.

Coſts.

Introduction of Coſts, and the Original of them.

1. *STATUTE of Marlebridge* 52 *H.* 3. *cap.* 6. was the firſt Statute that *gave the Defendant Damages and Coſts*, if it were found for him. 2 Inſt. 112.

2. *Stat. Glouc.* 6 *E.* 1. *Part* 2. *S.* 1. *whereas before Time Damages were not tax'd but to the Value of the Iſſues of the Land. It is provided, that the Demandants may recover the Coſts of his Writ purchaſed, together with the Damages aboveſaid.*

It ſeems that *none could* have recover'd Damages *in Plea Real, but in Plea Perſonal and mixt Actions*; For by the Statute of *Merton cap.* 1. Damages are given *in Dower* upon dying ſeiſed of the Baron, and by other Statutes Damages are given in Writ of *Entry ſur Diſſeiſin*, and in *Ayel and Coſinage*, and ſee the Statute of *Glouceſter cap.* 1. that in *all Caſes where a Man recovers Damages he ſhall recover Coſts*; and yet where *Great Damages* are given by the Statute, he ſhall not recover Coſts, and therefore it ſeems that the Statute of *Glouceſter is intended to give Coſts where ſingle Damages are to be recovered.* Br. Coſts, pl. 29.

Before this Statute, at the Common Law, no Man recovered any Coſts of Suit either in Plea Real, Perſonal, or Mixt. 2 Inſt. 288.

Here is expreſs Mention made but of the Coſts of his Writ, but it extends to all the legal Coſts of the Suit, but not to the Coſts and Expences of his Travel and Loſs of Time. 2 Inſt. 288.

3. *And this Act ſhall hold Place in all Caſes where the Party is to recover Damages.*

Before the making of this Statute, no Demandant recovered Damages in any Real Action, but only in a *Writ of Dower Unde nihil habet*, by the Statute of Merton, cap. 1. 2 Inſt. 289.

This Clause does not extend to give Costs where Damages are given to any Demandant, or Plaintiff in any Action by any Statute made after this Parliament; Ubi dampna dantur, Victus Victori in Expensis condempnari debet. 2 Inst. 289.

Generally this Branch gives Damages to him that Right has, and his Heirs, against the Intrudor, Abator, Disseisor, or other wrong-doer himself. 2 Inst. 289.

4. *And every Person from henceforth shall be compelled to render Damages where the Land is recover'd against him upon his own Intrusion, or his own Act.*

5. If the *Plaintiff* be *barred or nonsuited at Common Law*, all the Punishment, regularly, is Amercement. Jenk. 161. pl. 7.

New Abr. 511. S. P. in totidem Verbis cites 2 Inst. 288. but I do not observe S. P. there.

6. There was *no such Thing* as Costs of Suit *at Common Law*; *but* if the *Plaintiff* did not prevail he *was amerced Pro falso Clamore*; if he did prevail, then the *Defendant was in Misericordia* for his unjust Detention of the Plaintiff's Right, but this made the Plaintiff no Amends for the Costs that he had laid out of Pocket, in obtaining his Right; *so it stood till the Statute of Glouceſter, cap.* 1. but by that Statute, if any Person recovered Damages in a Plea Personal or Mixed, he should have his Costs, which was the *Original of Costs de Incremento*; for then Damages were found by the Jury, and it was thought no Dishonour to the Court, to tax the moderate Fees of Counsel and Attornies that attend the Cause; so Matters stood for the Plaintiff till 43 *Eliz. cap.* 6. Gilb. Hist. of C. B. 210.

7. There were *no Costs at Common Law* given *Ex Professo under that Title*, but the Plaintiff was punished in Amercement to the King Pro falso Clamore, and the Defendant in Misericordia, where the Judgment was against him, cum *Expensis Litis* under that Title, because he would suffer twice for the same Fault; But it seems *in the Iters* where the Expences of the Suits began to encrease, *they were wont to give their Costs in the Gross, and unblended with the Damages*, and the Judges being in these Iters, assisted with the Officers of the Court, and not hurried or strained in their Sittings, they could easily make a Computation of such Costs; but when Ed. 1. was changing his Iters, and bringing in Residentiary Justices to go the Circuits and try the Causes in their Counties, that there might be the same uniform Law, then it was necessary the Costs should be taxed above, and not at the Assizes; and thence by the Statute of Glouceſter, the 6 E. 1. they introduced Costs for the Plaintiff, and the Words are viz. upon the Assizes, Writs of Cosinage &c. the Demandant shall recover against the Tenant the Costs of his Writ purchased, together with the Damage aforesaid, and all this shall be holden in all Causes where a Man recovers Damages; this brought in Costs in Real Actions, where there was no Damages, and also in all Personal Actions, for even in Action of Debt there are Damages for the unjust Detention, and upon Demurrer the Damages are confessed, and therefore there is a sufficient Authority for the Court to assess the Expence or Damage. Gilb. Hist. of C. B. 214, 215.

Fol. 516.

[A] *To whom* Costs shall be given. [And against whom.]

1. IF Baron and Feme join in an Action, and a Verdict is given for the Plaintiffs, and the Jury assess Damages ultra Missas & Custagia

Custagia per ipsum, (who is the Baron) circa Sectam suam exposita to so much, & pro Misis & Custagiis illis to so much, and thereupon Judgment is given, that the Baron and Feme shall recover the Costs and Damages, though it is found, that the Baron only expended and disbursed the Money for the Costs of the Suit, inasmuch as the Feme had nothing, yet the Judgment is good, that the Baron and Feme shall recover the Costs; for there cannot be one Judgment for the Costs, and another for the Damages. M. 9 Car. B. R. between *Crusee and Berry*, adjudged in a Writ of Error. Intratur Tr. 9 Car. Rot. 1163.

2. An *Infano* of 12 Years of Age was *Lessor in Ejectment*, the *Lessee was Nonsuit*; the *Father of the Infant was prosecuted the Suit was dead*; 50 l. Costs were given to the Defendant, whereupon the Court made a *Rule, that the Lessor should pay Costs*. It was doubted in this Case, because of his Infancy; *but if his Father had been alive, they would have made him pay* the Costs, *or if he had left Assets, his Executor should*, but here was no Body but the Infant to be charged. Advisare vult. Freem. Rep. 373. pl. 478. Mich. 1674. B. R. Anon.

3. *Trustees* that *act contrary to their Trust* shall pay Costs. MS. Tab. 1702. Haberdasher's Company v. Attorney General.

4. Where on a *Bill to call a Trustee to account*, he *by Answer submits readily* to it, though, *found in Debt*, he shall pay Interest for the Balance only from the Time of the Account liquidated, and no Costs; otherwise *if he controverts the Account*, there if *found in Arrear* shall pay Interest and Costs, as the Plaintiff must have done if he had been found indebted to him. Chan. Prec. 254. pl. 206. Hill. 1705. Parrot v. Treby.

5. Lord Chancellor King; An *Infant by Prochein Amy brings a Bill, and never stirs in it* after *he comes of Age, and the Bill is dismissed.* The *Infant is liable* to pay Costs, *and must take his Remedy over against the Prochein Amy.* 2 Wms's Rep. 297. pl. 80. Trin. 1725. Turner v. Turner.

6. The *Inhabitants of a Hundred* have a Capacity to sue *for the Costs of a Nonsuit in Consequence of the Statute of Winton*, and of 23 H. 8. Gibb. 296. Trin. 5 Geo. 2. C. B. The Inhabitants of the Hundred of Laureſs v.

(A. 2) In what Cases.

1. *Assumpsit*, for that the Defendant, *in Consideration of such Clothes delivered at such a Place, promised to pay 8 l. and in consideration of a Debt upon Arrearages of Account, the Defendant being indebted in 18 l.* the Defendant *promised to pay it.* The Defendant pleaded non Assumpsit; and found against him, and *several Damages assessed, but entire Costs*, and Judgment accordingly for the Plaintiff. And Error thereof brought and held that *the Consideration upon the 2d Assumpsit was not sufficient*; But *for the 1st*, and for the entire Costs, the *Judgment was affirmed*; And *for the 2d* Assumpsit, *it was reversed.* Cro. E. 537. pl. 72. Hill. 38 Eliz. Grymston v. Reyner.

S. C. cited by Richardson. Hetl. 161.

2. In Action on the *Case* the Plaintiff was *Nonsuited*, and it was moved, that no Costs should be given against him, because the *Declaration was insufficient in Law*, so that if the Verdict had pass'd for the Plaintiff, he could not have Judgment, but it was answer'd, that it had been often ruled, that the Defendant should have Costs notwithstanding the Insufficiency of the Declaration, and that it never was denied but

So in Trespass for Battery brought *against a Constable* who was found not Guilty and

that what he did was as Officer the Plaintiff ſhall not take Advantage of the Inſufficiency Mich. 5 Car. B. R. Heylor's Caſe.

but only in **Grimſton's Caſe**, for Coſts are given for Vexation, cites it as agreed per Cur. D. [32. a. b. pl. 5. 6] 18 H. 8. [but it is miſprinted, and ſhould be Paſch. 28 & 29 H. 8.] [where it was ſo held by Fitzherbert and Baldwin, but Englefield dubitavit.] 2 Roll Rep. 88. Paſch. 17 Jac. B. R. Pafford v. Webb.

of the Writ and Declaration to excuſe themſelves of Coſts. Cro. C. 175. pl. 20.

3. But *after Judgment reverſed Debt does not lye for the Coſts* given *upon the firſt Judgment*. D. 32. b. Marg. pl. 6. cites Paſch. 1 Car. B. R.

S C. cited and S. P. reſolved accordingly. Palm. 365. Paſch. 21. Jac. B. R Prichard v Reynold.——2 Roll Rep. 327. S. C. reſolved accordingly.——Hetl. 146. Mich. 5 Car. C B **Knight v. Simmonds**, the Exception that the Venire was miſ written was allow'd, and becauſe the Defendant might have Judgment he cannot have Coſts; And Richardſon ſaid that B R. in Action on the Caſe by **Grimſton v Foſter**, it was found againſt him, and the Plaintiff for the Prevention of Coſts alleg'd, that the Declaration was not ſufficient, and it was allow'd; But if the Plaintiff be Nonſuit he ſhall not have Benefit of ſuch Exception to prevent Coſts, by Reaſon of the unjuſt Vexation.——S. P. as to the Nonſuit. Hob. 284. pl. 367. Trin. 16 Jac. Steward v. Sudbury.

4. In *Ejectment* the *Plaintiff miſtook his Venire Facias*, and the *Jury found for the Defendant*. The Defendant had Judgment for his Coſts notwithſtanding the Venire was miſtaken. Godb. 329. pl. 423. Arg. cites Mich. 18 Jac. Done v. Knott.

5. A *Man inhabiting in the moſt remote Part of England was arreſted eight times by Latitat, and no Declaration is put in*; and the Councel prayed Coſts for the Defendant. The Prothonotary ſaid, that he ſhall not have Coſts, unleſs he come in Perſon; But Richardſon ſaid on the Contrary, he ſhall have Coſts; for it appears that he had been put to travel, and a Day given to ſhew Cauſe why the Coſts ſhall not be given. Het. 73. Hill. 3 Car. C. B. Fenn v. Thomas.

6. Whether Coſts might be given *on a ſpecial Verdict*, the Court doubted; For the Statute 23 *H.* 8. *cap.* 15. ſays, that where a Verdict is found againſt the Plaintiff; But in a ſpecial Verdict it is neither found for or againſt; But it may be ſaid, that when it is adjudged againſt the Plaintiff, then it is found againſt him; and 4 *Jac. cap.* 3. which gives Coſts in an Ejectione Firmæ, had the ſame Words, if any Verdict, &c. But it may be anſwer'd, that as in Demurrer no Coſts ſhall be recovered, no more in a ſpecial Verdict, for that the Plaintiff had a *Probabilem Cauſam litigandi*, and the Statute may be intended of vexatious Suits &c. Het. 144. Trin. 5. Car. C. B. Fawkenbridge's Caſe.

7. *Affidavit that the Defendant owed but* 40 *s.* the Court ordered the Plaintiff to ſhew Cauſe why he ſhould not accept it and on Refuſal he ſhall have no Coſts, unleſs he proves more due. 2 Keb. 152. pl. 27. Hill. 18 & 19 Car. 2. in B. R. Rhodes v. Brooks.

8. A Prohibition was pray'd to the Eccleſiaſtical Court of Lincoln, for that the Plaintiff was proſecuted there ex Officio upon *Articles exhibited* againſt him *for not coming to Church, and for ſitting irreverently there when he did come*, and becauſe they taxed Coſts againſt him, the Court doubted, whether Coſts ought to be taxed, becauſe it was not a Cauſe between Party and Party, but promoted ex Officio Judicis, & per inſtantiam Curiæ, tho' a Perſon be aſſigned by the Court to proſecute it. Afterwards, by the Mediation of the Court, the Coſts were mitigated, and the Party ſubmitted to pay them, and to conform to the Laws of the Church. Hard. 503. pl. 10. Mich. 20 Car. 2. in Scacc. Browne v. Lake.

9. If

9. If the Defendant *pleads* a Plea *in Abatement*, and *Plaintiff confeſſes it*, the Plaintiff thereby ſaves Coſts; Per Cur. 12 Mod.. 145. Mich. 9 W. 3. Greenhill v. Shepherd.

10. When *Proceedings are ſet aſide for Irregularity*, there ſhall never be Coſts; Per Holt Ch. J. 12 Mod. 435. Mich. 12 W. 3. Anon.

11. In *Debt on Bond*, tho' the Money be *tender'd before Action brought*, which is *refus'd* yet the Plaintiff muſt have *Coſts*; For the Statute gives the Court no Juriſdiction till after Action brought, and therefore they cannot take Notice of a Tender before. Reſolved. 10 Mod. 26. Trin. 10 Ann. B. R. Player v. Bandy.

12. Where *Defendant imparls, and a 3d Perſon demands Conuſance of Pleas*, which is refuſed to the 3d Perſon as coming too late but which otherwiſe would have been granted, no Coſts ſhall be paid. 10 Mod. 156. Paſch. 12 Ann. B. R. Manners v. Perne.

13. *Three Declarations for one and the ſame Battery* being *ordered to be reduced into one*, Plaintiff's Councel prayed Coſts, but was denied, Notes in C. B. 250. Hill. 7. Geo. 2. Harper an Attorney, v. Woodhouſe and others.

14. Plaintiff's Attorney delivered a *very long Declaration* for entering Plaintiff's Houſe and taking and carrying away his Goods, and *in every Count repeated the Particulars contained in an Inventory of the Defendant's Goods taken at the Time they were diſtrained for Rent*, on Account of which Diſtreſs this Action was brought, *with ſome ſmall Variance* in the Deſcription of the Goods, and laying the Treſpaſſes on different Days; the Court, upon hearing Counſel on both Sides, it appearing that the Action was brought for one and the ſame Treſpaſs, *ordered two of the Counts to be ſtruck out, and the Attorney to pay Coſts.* Notes in C. B. 239. Hill. 9 Geo. 2. Macdonald v. Gunter.

15. Motion to ſet aſide *Plea in Abatement*, which *came in two Days after Declaration left at Defendant's Attorney's Chambers, under the Door, which was not found there till November 1ſt. The Agent had appeared* for the Country Attorney, *and Plaintiff had given no Notice to the Agent* of Declaration being filed or left; Per Cur. whether the Plea came regularly in or not is the only Queſtion? And the Declaration not being delivered, nor any Notice to the Agent of its being filed, the Rule for ſetting aſide the Plea was diſcharged with Coſts, it being *tricking Practice to put the Declaration under the Country Attorney's Chamber Door.* Notes in C. B. 251, 252. Mich. 12 Geo. 2. Burnett v. Kendall.

16. In what Caſes Coſts are *diſcharg'd by a General Pardon.* See Tit. Prerogative (S. a) pl. 13. and the Notes there.

(A. 3) For not going on to Trial.

1. WHERE, *upon Notice of Trial*, the *Defendant makes Affidavit, that he attended with his Counſel and Witneſſes*, and the *Plaintiff did not proceed to Trial*, the Court here will make a Rule for the Secondary to tax the Defendant his Coſts, if he finds that Coſts ought to be taxed. 2 L. P. R. 243.

2. *The King* ſhall pay Coſts for an Amendment, but ſhall not pay Coſts for not going on to Trial; but where there is a Proſecutor, he ſhall pay Coſts for Amendments, and not going on to Trial both, but then there muſt be *an Affidavit of the Name of him who is the Proſecutor*, for that does not appear upon the Indictment; and if the Defendant does not know the Proſecutor, he ought to apply to the Attorney General

Comb 419. S. C & S. P. as to the Proſecutor of an Information or Indictment.

neral, who will inform him. 1 Salk. 193. pl. 2. Hill. 8 W. 3. B. R. The King v. Edwards.

3. If upon Notice of Trial Defendant *draws Breviats, retains Counsel, and makes ready his Witnesses* before that Notice is countermanded; upon Affidavit thereof and Motion, he shall have such Costs as Master shall tax. 12 Mod. 560. Mich. 13. W. 3.

4. On a Motion for Costs *for not going on to Trial it appeared that a Countermand was given on Sunday*, the Day before the Commission Day, which it was said would have been good, had it not been on a Sunday, but the Court held, that Costs should be allowed. Rep. of Prac. in C. B. 15. Mich. 4 Geo. 1. Deighton v. Dalton.

5. *Action* was *laid in Cornwall. Notice of Trial was given in Town, and countermanded in the Country three Days before the Commission-Day of the Assises.* The Question was, whether this was a good Countermand to prevent Costs for not proceeding to Trial, Defendant having sent a Witness from London, who was got as far as Exeter before he heard of the Countermand? Per Cur. Notice of Trial connot be given in the Country, but may be well countermanded there; and though by that Practice Defendant is put to an Inconveniance in this Case, yet the Inconveniencies which must necessarily accrew from the contrary Practice would be much greater. The Countermand would have been good if given but two Days before the Commission-Day. Notes in C. B. 212, 213. Trin. 8 & 9 Geo. 2. Goodright, on the Demise of Hawkey v. Hoblyn.

See (B)

(A. 4) To whom; And against whom; Informers.

S. P. per Shute; And it was held, that the Party griev'd is a special Person, and is not to be intended of every Party grieved; For it is a Grief to every good Subject to see another offend the Law; but *Party griev'd* by this Statute *is he that has Damage*; And to this the Court agreed. Sav. 50, 51. pl. 106. Pasch. 25 Eliz. Walker's Case —— Where the Party griev'd brings the Action upon a Penal Law, he shall have Costs if he recovers, but contra if it be brought by a Common Informer. Lord Raym. Rep. 172. cited by Powell J. as adjudg'd in C. B. Trin. 8 W. 3.

1. BY the Words of the Statute of 18 *Eliz. cap.* 5. [S. 3.] That every Informer upon a Penal Statute that shall willingly delay Suit, discontinue, or be Nonsuit, or against whom the Matter shall pass by Verdict, or Judgment, shall pay Costs, it was held, that all Informers upon Penal Statutes, which give Action to him that will Sue, shall be said to be an Informer in the Common Course of Informers, and shall be consider'd as common Informers, though they never before inform'd against any; But where a Statute gives the Moiety, or other Part to the Party griev'd, and not to him that will sue in Common, there if one informs for himself and the Queen, he is not within the Compass of the Statutes. This Difference was taken for Law, and Judgment accordingly. And. 116. pl. 162. Knevet v. the London Butchers.

2. *Information* upon the Statute 21 H. 8. cap. 13. *against two Parsons*, (viz.) against *one for Non-residence*, and against the *other for taking a Farm*; one of them pleaded Sickness, and that by Advice of Physicians he removed into a better Air for Recovery of his Health; the other pleaded, that he took the Farm for Maintenance only of himself and Family; these were both good Pleas, and the Informer not proceeding, but having *brought* this Information *only for Vexation, and to make the Defendants*

dants compound with him, they exhibited another Information againſt him upon the Statute 18 Eliz. cap. 5. and moved the Court, that becauſe the Informer was a mean Perſon, he might give Bail to anſwer the Coſts, but it was denied, but made a Rule, that the Defendants ſhould not anſwer the Information before the Informer appear'd in Perſon. 2 Bulſt. 18 Mich. 10 Jac. Martin's and Gunnyſtone's Caſe.

3. Upon an Information *for Perjury* Holt Ch. J. ſaid, if the *Proſecutor gives Notice of Trial* (though in an Information) *the firſt Aſſiſes, and does not proceed*, the Defendant muſt have Coſts. If the *Perſon indicted gives Notice*, the Proſecutor ſhall have Coſts. Comb. 225. Mich. 5 W. & M. in B. R. the King v. Allen & al'.

4. Whether in an Action by Informer &c. for 5 l. upon 31 of El. for *ſelling an Horſe without Tolling* &c. See 3 Lev. 374. Mich. 5 W. & M. in C. B. Sedgwick v. Richardſon, where Levins, who was Counſel for the Plaintiff, ſays, that Judgment was given for the Plaintiff.

But Lutw. 201. S. C. reports, that he (Lutwich) was the only Counſel with the Defendant, and that he always after the Caſe was mov'd till the Report of it in 3 Lev. took it, that the Rule of Court was, that no Coſts were given in this Caſe; But this Report put him on further Inquiry, and for that Purpoſe he ſaw the Record, but no Judgment is entred on the Roll, how is there any Footſtep of the Caſe in Point of Coſts to be found by the Remembrance, or the Court-Book; but ſays, that what gives him full Satisfaction that the Court gave no Coſts, is, that the Defendant himſelf inform'd him now, as he had done before, within a little Time after the Caſe was debated, that he had only paid the Penalty, viz. the 10 l. in Diſcharge of the Suit againſt him.

5. In an *Information againſt D. and others, one Defendant was acquitted*, and the reſt found Guilty at the Aſſizes, and though the *Judge did not certify a probable Cauſe*, yet it was held, that the Proſecutor was not liable to pay this Defendant's Coſts, becauſe till the 8 & 9 *W.* 3. the Plaintiff never paid Coſts in any Action, if but one Defendant was found Guilty; and the Act of 4 & 5 *W. & M. cap.* 18. cannot be intended to make Proſecutors otherwiſe liable than as Plaintiffs were before in other Actions. 1 Salk. 194. pl. 5. 6 Ann. B. R. the Queen v. Danvers & al'.

6. In an *Information* filed *in the Attorney General's Name for beating a Cuſtom-Houſe Officer*, the *Proſecutor had given Notice of Trial, but not countermanded it, till the Defendant had retained his Counſel, and was ready to attend*, upon which Mr. Kettleby moved for Coſts; But Mr. Maſterman informed the Court, that in Informations of this Nature, *where the King's Name is more than barely made uſe of*, the Crown never receives nor pays Coſts; accordingly the Court refuſed the Motion. Barnard. Rep. in B. R. 275. Hill. 3 Geo. 2. the King v. Gohaire.

(B) In what *Actions*.

1. IN a Prohibition, if Iſſue be joined among others, whether the Defendant hath proſecuted in the Court Chriſtian after the Prohibition granted, and it is found againſt the Defendant, the Plaintiff ſhall have his Coſts, as well as where the Defendant is found Guilty in an Attachment upon a Prohibition. Mich. 15 Car. B. R. between *Facey and Lauge* adjudged, and then vouched Trin. 7 * Car. B. where it was ſo reſolved per Cur. upon a View of ſeveral ancient Precedents.

S. C. at Damages (P) pl. 24. —— Jo. 477. pl. 11. Facy v. Lang S. C. adjudg'd. —— Cro. C. 559 pl. 1. S. C. and cited a Caſe in C. B. where the Suit being commenc'd in the Spiritual Court after a Prohibition delivered, an Attachment

tachment issued on the Prohibition, and because the Party was damnified, and put to his Suit of Attachment, which was found to be sued, the Party there recovered Damages and Costs, and so the Court unanimously agreed here, that the Party should have his Damages and Costs found by the Jury, and Judgment accordingly Nisi. —— S. C. cited 3 Lev. 360.

* Jo. 447. cites it as 7 Jac.

See tit. Mortuary (A) pl. 2. and the Notes there.

2. **In an Action** upon the Statute of 21 H. 8. [cap. 6.] for taking a Mortuary **against the Statute, the Plaintiff shall have some Costs, though it is on a** Penal Law, **because it is brought for a Debt. New Entries** 164. **Contra Mich. 12 Jac. B.** *Smith's* **Case, per Curiam.**

3. **If Costs are** awarded to the Defendant in a Prohibition by the Statute of 2 E. 6. upon a Consultation **granted, and the** Party **for whom they are awarded** brings Debt for them, **he shall have his Costs in this Suit. Mich. 22 Jac. B. R. between** *Cockeram and Davis*, **dubitatur; but H. 22 Jac. B. R. it was adjudged per Curiam, that he shall have Costs, because this is** a new Suit and Judgment.

This Case is in D. 177. b. pl. 33. —— Kelw. 209. a. pl. 12. Mich. 2 & 3 Eliz. Daniel's Case.

4. **In an Action of** Debt upon the Statute of 1 & 2 Ph. & Ma. cap. 12. **of** Distresses **upon the Branch of the Statute, by which the** 5 l. and triple Damages are given **to the Party grieved,** for driving a Distress out of the Hundred, **no Costs are to be given by the Law, because the Statute by Intendment gives treble Damages in lieu of the whole. D. 2 Eliz. 177. 32. Co. Magna Chart. 289.**

S. C. & S. P. accordingly. —— Bendl. 80. pl. 125. S. C. —— Note, that where *Action Penal* is given *by Statute to recover a great Sum by Action of Debt for ingrossing* &c. there the *Plaintiff shall not recover Costs and Damages* in this Action of Debt. Br. Damages, pl. 200. cites 35 H. 8. & Trin. 4 M. 1. —— Br. Costs, pl. 32. cites 35 H. 8. S. P. —— Br. N. C. pl. 258. cites 35 H. 8. & Trin. 4 M. 1. S. P. —— 10 Rep. 116. b. cites Br. Damages, pl. 200.

Cro. C. 559 pl. 3. North v. Wingate S.C. resolv'd per tot. Cur. and that when a *Stat.* * Fol. 517. *gives a Penalty certain, and gives an Action of Debt*, if the Defendant does pay upon Demand, but enforces the Party to a Suit, when he recovers he shall recover his Damages, because he

5. But upon the Branch **of this Statute of** 1 & 2 Ph. & Ma. by **which it is enacted,** That if any **one** takes more than 4 d. for impounding a Distress, he shall forfeit 5 l. to the Party grieved, over and besides the Sum taken ultra 4 d. **if any Action of** Debt **be brought** by the Party grieved for the 5 l. **for that the Defendant took** 6 d. **ultra the** 4 d. **for the impounding a Distress, and the** Defendant pleads Nil debet, **and it is found against him, the Jury ought to give** (*) **Costs**; **for here** this is a certain Debt **before the Action brought, tho' it be by a Penal Law,** and Costs shall be given for the Delay in Non-payment of the Money at the Return of the Summons, **as he might have paid it, and been discharged of his Costs**; **for** this is not like **to the first Branch of this Statute, where** triple Damages **are given, nor to other Penal Statutes,** where the Damages or Debt are uncertain, **as upon the 2 of Ed. 6. till Recovery. Mich. 15 Car. B. R. between** *North and Musgrave*, **in a Writ of Error upon a Judgment in Banco, where Costs given upon Advice, adjudged per Curiam, and the first Judgment affirmed. Intratur Tr. 15 Rot. 975. New Entries** 163. **upon the Statute of** 13 Eliz. **cap. 5. of** Forgery **of false Deeds. New Entries** 164. **upon the Statute of** 21 H. 8. **cap. 6. of** Mortuaries, **Costs given.**

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tachment issued on the Prohibition, and because the Party was damnified, and put to his Suit of Attachment, which was found to be sued, the Party there recovered Damages and Costs, and so the Court unanimously agreed here, that the Party should have his Damages and Costs found by the Jury, and Judgment accordingly Nisi.——S. C. cited 3 Lev. 360.

* Jo. 447. cites it as 7 Jac.

See tit. Mortuary (A) pl. 2. and the Notes there.

2. **In an Action** upon the Statute of 21 H. 8. [cap. 6.] for taking a Mortuary **against the Statute, the Plaintiff shall have some Costs, though it is on a** Penal Law, **because it is brought for a Debt. New Entries** 164. **Contra Mich. 12 Jac. B.** *Smith's* **Case, per Curiam.**

3. **If Costs are** awarded to the Defendant in a Prohibition by the Statute of 2 E. 6. upon a Consultation **granted, and the** Party **for whom they are awarded** brings Debt for them, **he shall have his Costs in this Suit. Mich. 22 Jac. B. R. between** *Cockeram and Davis*, **dubitatur; but H. 22 Jac. B. R. it was adjudged per Curiam, that he shall have Costs, because this is** a new Suit and Judgment.

This Case is in D. 177. b. pl. 33. ——Kelw. 209. a. pl. 12. Mich. 2 & 3 Eliz. Daniel's Case.

4. **In an Action of** Debt upon the Statute of 1 & 2 **Ph. & Ma.** cap. 12. **of** Distresses **upon the Branch of the Statute, by which the** 5 l. and triple Damages are given **to the Party grieved,** for driving a Distress out of the Hundred, **no Costs are to be given by the Law, because the Statute by Intendment gives treble Damages in lieu of the whole. D. 2 Eliz. 177. 32. Co. Magna Chart. 289.**

S. C. & S. P. accordingly. ——Bendl. 80. pl. 125. S. C. —— Note, that where *Action Penal* is given *by Statute to recover a great Sum by Action of Debt for ingrossing* &c. there the *Plaintiff shall not recover Costs and Damages* in this Action of Debt. Br. Damages, pl. 200. cites 35 H. 8. & Trin. 4 M. 1.—Br. Costs, pl. 32. cites 35 H. 8. S. P. —Br. N. C. pl. 258. cites 35 H. 8. & Trin. 4 M. 1. S. P.—10 Rep. 116. b. cites Br. Damages, pl. 200.

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14. W. brought an *Action upon* the Statute 1 & 2 *P. & M.* against B. *for unlawful impounding of Distresses*, and was *Nonsuit*; It was moved by Shuttleworth Serjeant, if the Defendant should have Costs upon the Statute of 23 H. 8. and it was adjudged, that he should not; and that appears clearly by the Words of the Statute &c. for this Action is not conceived upon any Matter which is comprised within the said Statute and also the Statute upon which this Action is grounded, was made after the said Statute of 23 H. 8. which gives Costs, and therefore the said *Statute* 23 *H.* 8. and the Remedy of it, *cannot extend to any Action done by* 1 & 2 *P. & M.* And Rhodes J. said, it was so adjudged in 8 Eliz. 3 Le. 92. Pasch. 26 Eliz. in C. B. Wrennam v. Bullman.

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16. *Avowry for an Amercement in a Leet, for not doing Suit*, the *Plaintiff was nonsuited*, for which the Defendant had a Return, and he prayed his Costs, but the Opinion of the Court was, he should not have Costs, for it is not such a Thing for which *the Statute* doth give Costs, for it *extends only to Customs and Services*. Cro. E. 300. pl. 15. Pasch. 34 Eliz. in B. R. Porter v. Gray.

17. *Action* upon the Statute 5 Eliz. *for Perjury*, it was *found for the Defendant*, and 9 l. assessed for Costs to him; and it was moved, that Costs shall not be given against the Plaintiff, for he sueth as a Party grieved, and not as a common Informer, and so not within the Statute. 28 Eliz. but it was answered, that *Costs shall be here upon the Statute* 21 *H.* 8. *which giveth it upon every Action upon Statute*. Gawdy, this cannot be, for the Statute 5 Eliz. was made after that Statute. *Quære* of it. Cro. E. 177. pl. 4. Pasch. 32 Eliz. in B. R. Spire v. Ross.

18. In *Battery*, the *Defendant was Bail* for A. and B. who afterwards were condemned; *Error was brought* in the Exchequer Chamber, and the *first Judgment was affirmed, and other new Costs given* by the Justices there, and the Record was remanded into B. R. and now a Scire Facias was prayed against the Bail, as well for the Damages upon the first Judgment, as for the Costs given in the Exchequer; It was the Opinion of the Court, that the *Bail was not chargeable with the new Costs*, for they take upon them to pay only the Condemnation of this Court, and not of any other Court. Cro. E. 587. pl. 21. Mich. 39 & 40 Eliz. B. R. Penruddock v. Errington.

Brownl. 98. S. C. seems only a Translation of Yelv.

19. On a *Libel for Tithes*, the Defendant *suggested a Modus as to Part* of the Tithes, *and a Contract executed in Satisfaction for the Rest*; and because he proved not his Suggestion within 6 Months, the Parson had a *Consultation, and Costs assessed*. In Debt brought in C. B. for the Costs, the Plaintiff had Judgment. Error was brought in B. R. and assigned, that no Costs ought to be assessed, because the *Suggestion* for the Prohibition was *grounded upon the Modus, which must be proved, and also upon the Contract, which needs no Proof*, and therefore the Suggestion being entire, and Part of it needing no Proof, they could not

give

give any Coſts; For that is where the whole Matter of the Suggeſtion requires Proof. Yelv. 119. Hill. 5 Jac. B. R. Cobb v. Hunt.

20. Note, it was the Opinion of all the Juſtices, and ſo declared, that if the Plaintiff in an *Ejectione Firmæ* doth miſtake his Declaration, that the Defendant in ſuch Caſe ſhall have his Coſts of the Plaintiff by reaſon of his unjuſt Vexation. Godb. 345. pl. 439. Trin. 21 Jac. B. R. Anon.

21. In *Aſſiſe* brought againſt D. the *Plaintiff was Nonſuit*, and D. moved to have Coſts, and it was denied by the whole Court, becauſe an Aſſiſe is not within the Words of the Statute. Brownl. 28, 29. Anon.

22. In an Action for *ſlandring the Defendant's Title* the Plaintiff had Judgment. It was aſſign'd for Error, that 10s. Damages were given, and yet 11l. was given for Coſts. The Ch. J. thought it Error, becauſe Action on the Caſe for Slander was within the Statute 21 Jac. [cap. 16.] but the three others e contra; For tho' it is within the firſt Branch as to Actions to be brought within the time limited, becauſe in that Caſe the Words of the Statute are General, Actions on the Caſe; yet the Clauſe for Coſts are, Actions on the Caſe for Slander, and this *ought to be to the Perſon* of a Man, *and not to the Title of Lands*; For this is not properly a Slander, but a Cauſe of Damage. Jo. 196. pl. 8. Mich. 4 Car. B. R. Low v. Harewood.

Cro. C. 140. pl. 16. Lawe v. Harwood. S. C held accordingly, but ſays, that Hide Ch. J. ſeem'd to doubt.—— Palm. 529. Harwood v. Lowe S C. and S. P. held accordingly by three Juſtices, and Hide Ch. J. ſaid nothing one way or other.——Ley 82. Low v. Woodward S. C. reſolv'd not to be within the Statute.—— Gilb. Hiſt. of C. B. 217. S. P. and in Marg. cites S. C.

23. F. brought an Action of *Treſpaſs* againſt D. *for entring into his Houſe, and breaking open his Cheſt, and taking away his Goods.* The Defendant pleaded a ſpecial Plea, viz. that he did it by way of Diſtreſs for Rent due unto him. The Plaintiff replied, De Injuria ſua propria abſque tali Cauſa; upon this an Iſſue was joined, and a Verdict found for the Plaintiff. Roll Ch. J. ſaid, that he muſt pay Coſts, otherwiſe there ſhall be Vexation without amends; therefore let the Plaintiff take his Judgment. Sty. 153. Mich. 24 Car. B. R. Frank v. Dixon.

24. Plaintiff in a *Scandalum Magnatum* ſhall have no Coſts, tho' he has a Verdict. 2 Show. 506. pl. 467. Hill. 2 & 3 Car. 2. B. R. in a Nota at the End of the Caſe of Ld. Peterborough v. Williams.

25. In an Action upon the Statute 8 *H.* 6. *of forcible Entry*, the Secondary craved the Direction of the Court before he could tax Coſts; and they were doubtful in it, and rather inclined the Plaintiff was to have no Coſts; But upon the View of **Pilford's Caſe**, in 10 Rep. and the Books there cited, they reſolved that he ſhould have treble Coſts. Vent. 22. Paſch. 21 Car. 2. B. R. Skier v. Atkinſon.

26. Serjeant Darnel moved for the Defendant, that whereas the *Judge* that tried the Cauſe, *certified only an Aſſault, and no Battery*; yet the Plaintiff had ſued out and executed an Execution for his full Coſts, which exceeded the Damage, being under 40s. Holt. Ch. J. You come too late, after Execution executed; You may take your Action. See Stat. 22 & 23 Car. 2. cap. 9. ad finem. Comb. 222. Mich. 5 W. & M. B. R. Phelps v. Rainer.

27. In Treſpaſs for *digging in his Cloſe* &c. there ſhall be no Coſts; Contra if that had been a carrying away. Hill. 7 W. 3 B. R. Reynold v. Osborn.

28. In Treſpaſs for entring his Cloſe, and *throwing down ſo many Perch of Hedges, no Coſts*; Contra if that had been a carrying away. Hill. 8 W. 3. Franklyn v. Jolland.

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16. *Avowry for an Amercement in a Leet, for not doing Suit*, the *Plaintiff was nonsuited*, for which the Defendant had a Return, and he prayed his Costs, but the Opinion of the Court was, he should not have Costs, for it is not such a Thing for which *the Statute* doth give Costs, for it *extends only to Customs and Services*. Cro. E. 300. pl. 15. Pasch. 34 Eliz. in B. R. Porter v. Gray.

17. *Action* upon the Statute 5 Eliz. *for Perjury*, it was *found for the Defendant*, and 9 l. assessed for Costs to him; and it was moved, that Costs shall not be given against the Plaintiff, for he sueth as a Party grieved, and not as a common Informer, and so not within the Statute. 28 Eliz. but it was answered, that *Costs shall be here upon the Statute* 21 *H.* 8. *which giveth it upon every Action upon Statute*. Gawdy, this cannot be, for the Statute 5 Eliz. was made after that Statute. *Quære* of it. Cro. E. 177. pl. 4. Pasch. 32 Eliz. in B. R. Spire v. Ross.

18. In *Battery*, the *Defendant was Bail* for A. and B. who afterwards were condemned; *Error was brought* in the Exchequer Chamber, and the *first Judgment was affirmed, and other new Costs given* by the Justices there, and the Record was remanded into B. R. and now a Scire Facias was prayed against the Bail, as well for the Damages upon the first Judgment, as for the Costs given in the Exchequer; It was the Opinion of the Court, that the *Bail was not chargeable with the new Costs*, for they take upon them to pay only the Condemnation of this Court, and not of any other Court. Cro. E. 587. pl. 21. Mich. 39 & 40 Eliz. B. R. Penruddock v. Errington.

Brownl. 98. S. C. seems only a Translation of Yelv.

19. On a *Libel for Tithes*, the Defendant *suggested a Modus as to Part* of the Tithes, *and a Contract executed in Satisfaction for the Rest*; and because he proved not his Suggestion within 6 Months, the Parson had a *Consultation, and Costs assessed*. In Debt brought in C. B. for the Costs, the Plaintiff had Judgment. Error was brought in B. R. and assigned, that no Costs ought to be assessed, because the *Suggestion* for the Prohibition was *grounded upon the Modus, which must be proved, and also upon the Contract, which needs no Proof*, and therefore the Suggestion being entire, and Part of it needing no Proof, they could not give

give any Coſts; For that is where the whole Matter of the Suggeſtion requires Proof. Yelv. 119. Hill. 5 Jac. B. R. Cobb v. Hunt.

20. Note, it was the Opinion of all the Juſtices, and ſo declared, that if the Plaintiff in an *Ejectione Firmæ* doth miſtake his Declaration, that the Defendant in ſuch Caſe ſhall have his Coſts of the Plaintiff by reaſon of his unjuſt Vexation. Godb. 345. pl. 439. Trin. 21 Jac. B. R. Anon.

21. In *Aſſiſe* brought againſt D. the *Plaintiff was Nonſuit*, and D. moved to have Coſts, and it was denied by the whole Court, becauſe an Aſſiſe is not within the Words of the Statute. Brownl. 28, 29. Anon.

22. In an Action for *ſlandring the Defendant's Title* the Plaintiff had Judgment. It was aſſign'd for Error, that 10s. Damages were given, and yet 11l. was given for Coſts. The Ch. J. thought it Error, becauſe Action on the Caſe for Slander was within the Statute 21 Jac. [cap. 16.] but the three others e contra; For tho' it is within the firſt Branch as to Actions to be brought within the time limited, becauſe in that Caſe the Words of the Statute are General, Actions on the Caſe; yet the Clauſe for Coſts are, Actions on the Caſe for Slander, and this *ought to be to the Perſon* of a Man, *and not to the Title of Lands*; For this is not properly a Slander, but a Cauſe of Damage. Jo. 196. pl. 8. Mich. 4 Car. B. R. Low v. Harewood.

Cro. C. 140. pl. 16. Lawe v. Harwood. S. C held accordingly, but ſays, that Hide Ch. J. ſeem'd to doubt.—— Palm. 529. Harwood v. Lowe S C. and S. P. held accordingly by three Juſtices, and Hide Ch. J. ſaid nothing one way or other.——Ley 82. Low v. Woodward S. C. reſolv'd not to be within the Statute.—— Gilb. Hiſt. of C. B. 217. S. P. and in Marg. cites S. C.

23. F. brought an Action of *Treſpaſs* againſt D. *for entring into his Houſe, and breaking open his Cheſt, and taking away his Goods.* The Defendant pleaded a ſpecial Plea, viz. that he did it by way of Diſtreſs for Rent due unto him. The Plaintiff replied, De Injuria ſua propria abſque tali Cauſa; upon this an Iſſue was joined, and a Verdict found for the Plaintiff. Roll Ch. J. ſaid, that he muſt pay Coſts, otherwiſe there ſhall be Vexation without amends; therefore let the Plaintiff take his Judgment. Sty. 153. Mich. 24 Car. B. R. Frank v. Dixon.

24. Plaintiff in a *Scandalum Magnatum* ſhall have no Coſts, tho' he has a Verdict. 2 Show. 506. pl. 467. Hill. 2 & 3 Car. 2. B. R. in a Nota at the End of the Caſe of Ld. Peterborough v. Williams.

25. In an Action upon the Statute 8 *H.* 6. *of forcible Entry*, the Secondary craved the Direction of the Court before he could tax Coſts; and they were doubtful in it, and rather inclined the Plaintiff was to have no Coſts; But upon the View of **Pilford's Caſe**, in 10 Rep. and the Books there cited, they reſolved that he ſhould have treble Coſts. Vent. 22. Paſch. 21 Car. 2. B. R. Skier v. Atkinſon.

26. Serjeant Darnel moved for the Defendant, that whereas the *Judge* that tried the Cauſe, *certified only an Aſſault, and no Battery*; yet the Plaintiff had ſued out and executed an Execution for his full Coſts, which exceeded the Damage, being under 40s. Holt. Ch. J. You come too late, after Execution executed; You may take your Action. See Stat. 22 & 23 Car. 2. cap. 9. ad finem. Comb. 222. Mich. 5 W. & M. B. R. Phelps v. Rainer.

27. In Treſpaſs for *digging in his Cloſe* &c. there ſhall be no Coſts; Contra if that had been a carrying away. Hill. 7 W. 3 B. R. Reynold v. Osborn.

28. In Treſpaſs for entring his Cloſe, and *throwing down ſo many Perch of Hedges, no Coſts*; Contra if that had been a carrying away. Hill. 8 W. 3. Franklyn v. Jolland.

29. 8 & 9

29. 8 & 9 *W.* 3. *cap.* 10. *S.* 3. *In all Actions of Waſte and Actions of Debt upon the Statute for* not ſetting forth Tithes, *wherein the ſingle Value or Damage found by the Jury ſhall not exceed* 20 *Nobles, and in all Writs of* Scire Facias *and* Prohibitions, *the Plaintiff obtaining Judgment of Execution after Plea pleaded, or Demurrer joined, ſhall likewiſe recover his Coſts.*

30. It is the *Courſe* of the Court *of Exchequer, that Plaintiffs ſhall have Coſts in Equity, where they recover, without any Order for them.* M.S. Tab. 1702. Warburton v. Warburton.

31. If a *Bill* in Equity be brought *for a Partition*, no Coſts can be had on either ſide, becauſe it is an *amicable Suit*; ſo it is at Law; Per the Maſter of the Rolls. Paſch. 7 Ann.

32. Conſtant Courſe of the Court, where *mutual Account* is decreed, to *reſerve Coſts till after the Report*, that the Court may have it in their Power to puniſh the wrong doer. M.S. Tab. Feb 16th 1709. Rider v. Bayley.

33. In *Ejectment* of Lands in Kent, there was a *Verdict Pro Quer' as to Part, and* a Verdict *for Lord Suſſex for ſome Lands in Poſſeſſion, and ſeveral other Defendants* nam'd in the Rule with my Lord Suſſex *were acquitted*; as to ſeveral otherDefendants in otherRules there was aVerdict that they were Not Guilty; Per Cur. upon 8 & 9 W. 3. cap. 10. as to all theſe Deſendants nam'd in the Rule where all were acquitted, they muſt have their Coſts; as to the other Deſendants nam'd in the Rule with my Ld. Suſſex. where Part is found againſt them tho' acquitted, they are not to have their Coſts, and the Court certified, that there was a reaſonable Cauſe for making ſuch Perſons Defendants on aTrial at Bar. Mich. 9 Ann. Regin. B. R. Ld. Suſſex's Caſe.

34. *Treſpaſs* for *breaking his Cloſe, and* for breaking down of his *Rails, pro Fenſura, and* for *ſpoiling of his Locks thereto affix'd*; Coſts denyed. Trin. 11 Ann. B. R. Mabbot v. Whitnell.

35. In *Caſe for Words*, or an *Aſſumpſit* where *Damages* are *taken on one Promiſe only, or one Set of the Words*, Coſts are given generally; So *on a Writ of Inquiry on one Promiſe* (where two are in the Declaration, and to one a Demurrer &c. & Judic' pro Quer' and Non Aſſumpſit to the other, and a Noli Proſequi &c.) the Damages and Coſts of the Suit ſhall be general. Hill. 11 Ann. B. R. Baker v. Campbell, for the Coſts of Suit are the ſame whether the 1ſt. or 2d. Promiſe be not perform'd.

36. Coſts ſhall follow the Event of an *Account*, but if the Account be *intricate and doubtful* there ſhall be no Coſts. M.S. Tab. *March* 8th 1716. Pitts. v. Page.

37. Held by Judge Eyre in Eſſex, Lent Aſſ. 1719, that where a *Treſpaſs was wilful* the Judge would certify, tho' no Malice prov'd, and ſo was the Practice.

38. And alſo, that where *Son Aſſault is pleaded* there is no Occaſion for a Certificate, becauſe it is admitted by the Plea.

39. Upon a *Writ of Inquiry executed after Judgment by Default in a Prohibition*, Plaintiff ſhall have his Coſts; adjudg'd in C. B. and affirm'd in Error. Comyns's Rep. 335. Mich. 6 Geo. 1. Bettyſon v. Savage.

(C) In Replevin.

1. REplevin *against two*; the *one came and avowed for himself, and confessed for his Companion for Rent Arrear*; the *Plaintiff Riens Arrear*, and so to Issue, and the Plaintiff prayed Process against the other; Per Hill, he is out of the Court, and you shall recover your Damages for all against him who pleaded &c. Nota. Br. Replevin, pl. 24. cites 21 E. 3. 20.

2. In Replevin, the *Defendant claimed Property*, upon which they were at Issue, and *found for the Plaintiff to the Damage of* 20 *Marks, and the taking of a Cow*; the *Defendant prayed that the Plaintiff might not have Recovery of the Damages for the Cow, till the Beasts* of the Defendant, which the Plaintiff has *in Withernam*, of which Cape issued against the Plaintiff, *are delivered*; sed non Allocatur. Per Tirwhit upon this Process against the Plaintiff for the Withernam the Defendant shall recover Damages against the Plaintiff for the Detinue of the Withernam; quære, for by the Reporter a Man cannot recover Damages *without Original*. Br. Damages, pl. 50. cites 11 H. 4. 10.

If the Defendant claims Property in Court which is found against him, *the Plaintiff shall recover all in Dama-* Br. Replevin pl. 15. cites 7 H. 4. 27.

3. In *Replevin*, the *Defendant justify'd as Bailiff*; the *Plaintiff pleaded Jointenancy in the Land with J. M.* and *Day was given in the same Term*, and *at the Day the Court demanded the Defendant, who made Default*, and the *Plaintiff recovered Damages* 4 *l.* because he had confess'd the Taking, and did not maintain it. Br. Default, pl. 24. cites 14 H. 4. 2.

4. If a Man *takes* Cattle for *Damage-feasant*, and the other *tenders Amends*, and he refuses it &c. now if he sues a Replevin for the Cattle, he shall *recover Damages only for the detaining* of them, *and not for the taking* of them; for that the same was lawful, and therefore no Return shall be. F. N. B. 69. (G.) cites 22 H. 7. 30. Contra in Case of Trespass.

Ibid. in the new Notes there (a.) says, See 27 Ed. 3. 8. b. 45 Ed. 3. 9. *But if* the other had them *in Pound before Amends tendered*, it is then too late to tender the Amends, and on the Avowry the Defendant shall have *no Return till a new Tender*, and then the Party may have Detinue. Quære 13 H. 4. 17. 14 H. 4. 4. And if he *tenders before the Taking*, the Taking is tortious, 7 Ed. 3. 8. and *if immediately on the Taking* the Detainer is so, and he *may recover Damages* for it, and no Return shall be awarded to the Lord. 45 Ed. 3. 9.

5. And in a *Replevin*, if the Plaintiff *declares, that* the *Defendant yet has, and detains* the Cattle, and the *Defendant* appears, and afterwards *makes Default*, the *Plaintiff shall* have Judgment to *recover all in Damages*, as well the Value of the Cattle, as Damages for the Taking of them, *and his Costs*. F. N. B. 69. (L.) cites M. 8 H. 8. Rot. 108.

So if the *Defendant claims Property, or says* that *he did not take* &c. if in the mean Time the *Beast die, or are Sold*, so that he cannot have a Return, he may recover all in Damages, if it be found for him. Ibid in the new Notes there (c) cites 7 H. 4 18. —— The *Defendant claimed Property* in C. B. and they are at Issue, and it was *found for the Plaintiff*, it seems he shall *recover the Value* of the Thing taken, *and his Damages*. Ibid cites 11 H. 4. 10. —— If the *Defendant* makes Conusance, and *avows, and* after Day given over *makes Default*, the Plaintiff shall recover his *Damages by Taxation* of the Court. Ibid. cites 14 H. 4. 2.

6. 7 *H.* 8. *cap.* 4. *S.* 3. *Every Avowant; and other Person, that makes Avowry or Conusance, or justifies as Bailiff in Replevin or Second Deliverance for Rent, Custom, or Service, if the Plaintiff be barred, shall recover Damages and Costs.*

7. In second Deliverance the Plaintiff was *nonsuited*, and the *Defendant prayed his Damages and Costs by the Statute* 7 *H.* 8. *cap.* 4. Quod Nota; and the Statute is, that where he is barr'd, or the Matter

found againſt him, there the Defendant ſhall recover Damages; Quod Nota. Br. Second Deliverance, pl. 1. cites 19 H. 8. 8.

8. If the Avowant recovers in Replevin he ſhall not recover *Damages for the Time mean, but only for the Treſpaſs done at the Time of the Taking*; Per tot. Cur. and ſaid that it had been always taken ſo. Dal. 52. pl. 23. Anno 5 Eliz. Anon.

Cro. E. 320. pl. 4. Haſelop v Chaplin. Trin. 36 Eliz. S. C. this Caſe was moved again and divers Precedents were ſhewn

9. Error of a Judgment in Replevin, where the Defendant *avowed for an Eſtray*, and had a Return thereof awarded, with Coſts and Damages; Error was aſſigned, for that no Coſts and Damages are given in this Caſe, either by the Statute, 7 H. 8. or 21 H. 8. for they are given only in Avowries for Rents, Cuſtoms, Services, or for Damage Feaſant; the Court conceived that it was Error, but would adviſe, Et adornatur. Cro. E. 257. pl. 36. Mich. 33 & 34 Eliz. B. R. Haſlip v. Chaplin.

out of C. B. that always ſince the Statute Damages and Coſts had been given to the Avowant for Amercements in Leets, and for Heriots and other Caſes not mentioned in the Statute. And the Juſtices conceived that their Courſe being ſo ſince the Statute, the Law ſhall be conſtrued to be ſo; And ſo inclin'd in their Opinion. But the Judgment was reverſed for a Fault in the Replevin. —— Ow. 13. Haſelwood's Caſe S. C. accordingly.

10. If a Man has *Judgment in the Second Deliverance* there ſhall be *Return Irrepleviſable* aud he ſhall recover *Damages*. Goldsb. 185. pl. 126. Hill. 43 Eliz. Anon.

Cro. J. 520. pl. 3. Samuel v. Hoder, S. C. The Court at firſt were in much doubt thereof, but afterwards on Conſideration of the Statute, which gives Coſts in every Action where the Plaintiff ſhould have Coſts, they held the Avowant ſhould have Coſts, but adviſed him to *releaſe his Damages, and take* his *Judgment for his Coſts*, and to have Return, and ſo it was adjudg'd, and cites like Judgment given 38 Eliz. Chapley v. Harſley; and Mich. 44 & 45 Eliz. Mackword v. Shepherd. —— 2 Roll Rep. 74. S. C. adjudged that the Plaintiff ſhould have Coſts, but the Court doubted whether he ſhould have Damages, and therefore ordered him to releaſe his Damages.

11. In Replevin the Defendants avowed for an *Amercement of* 10 *l. aſſeſſed in the Sheriff's Tourn for not repairing of a Way, which by Cuſtom they ought for to repair*; It being *found for the Avowants*, the *Jury aſſeſſed Coſts and Damages*. It was objected, that the Coſts and Damages ought not to be given by the Statute of 21 H. 8. [cap. 19.] which did not extend to Amercements in Turns and Leets, but only to Rents, Cuſtoms, and Services. It was anſwered, that the Coſts and Damages were well aſſeſſed, and cited 8 Rep. 38. Grieſley's Caſe, and Joyner's Caſe, that the Avowant, for an Amercement in a Leet, ſhould have Coſts and Damages, but no Judgment appears. Mo. 893. pl. 1257. Hill. 14. 1 Jac. C. B. Loder v. Samuel.

S C. cited 2. Lutw. 1194. in Caſe of Winnard v. Foſter, Trin. 3 W. & M. C. B. But the Reporter ſays that in the Report of this Caſe (as he ſuppoſes) 2 Roll Rep. 47. by the Name of Denton and Parſon's Caſe, it is ſaid, that Whitlock mov'd to have Judgment for the Coſts and Damages found by the Jury for the Plaintiff, according to 2 H. 6. 1. and that Whitlock J. anſwer'd him, that this he could not have, becauſe the Avowant is Actor, and he is as a Plaintiff in other Actions, and he had good Cauſe of taking the Beaſts; that at the Time of the ſaid Caſe of 2 H. 6. 1. no Law was made which gave the Avowant Coſts till 21 H. 8. But Doderidge bid him take his Judgment at his Peril; For that they would not direct him. And Serjeant Lutwich adds, that in Brownl. 173. it is expreſsly ſaid, and with a Nota in the Margin, that upon *Accoury for Rent* the *Plaintiff for Part pleaded Payment*, and *for the other an Accord*, and the *one Iſſue*

12. Replevin; The Defendant *avows for* 36 *l. Rent for a Year and half*, being 25 l. [24 l.] by the Year; the *Plaintiff pleads Payment of* 12 *l.* and *and another Iſſue was* brought *for the* 24 *l.* and for the *1ſt. Iſſue* it *was found for the Plaintiff and Damages and Coſts taxed by the Jury*; but it was *found againſt the Plaintiff for the 2d. Iſſue*, and now moved, that the Juries finding of Coſts and Charges for the Plaintiff is void; for when Part is found for the Avowant, he ſhall have Return, and Damages and Coſts, and the *Return ſhall be for the Defendant, where any Part is found for him*; wherefore it was adjudged accordingly. Cro. J. 473. pl. 3. Paſch. 19. Jac. B. R. Dent v. Parſo.

is found for the Plaintiff, and the other for the Defendant; the *Plaintiff shall recover his Costs and Damages*, and the *Defendant shall have Judgment of Returno Habendo, and no Costs and Damages*; But that the Reporter [Brownlow] thought *otherwise, if* there are *two several Avowries*; for then they shall recover Costs and Damages on both Sides; And Serjeant Lutwich says it is probable that the Case intended by Brownlow was the Case of Denton v. Parsons, reported in 2 Roll Rep. 37. For it agrees therewith in the Fact of the Case, and then the Serjeant adds a Copy of the Judgment it self as enter'd upon the Record.

13. *Executor* shall have Costs in Replevin; Resolv'd. 2 Roll Rep. 457. Trin. 22 Jac. B. R. Farnell v. Keightly.

14. In Replevin of a *Distress* taken *for a Penalty forfeited to the Ld. of the Manor for Breach of a By-Law*; one Question was, whether Damages and Costs should be given to the Defendant upon the Statute 7 H. 8. cap. 4. and 21 H. 8. cap. 19? but it was not resolv'd. Cro. C. 497. pl. 2. Pasch. 14 Car. and 532. pl. 11. Hill. 14 Car. B. R. James v. Tutney. Jo. 421. pl. 9. Hill. 14 Car. and 434 Trin. 15 Car. B. R. James v Tintney S. C. the Court divided. —— Mar. 28. pl. 64. S. C. accordingly.

15. A *Nomine Pœnæ* is an uncertain Thing, and comes not within the Statute of 21 *H.* 8. *touching Avowries* as a Rent-Charge does, which is certain. Arg. Sty. 4. Hill. 21 Car. B. R. in Case of Remington v. Kingerby.

16. In Replevin the Defendant avowed for a Rent-Charge, and the *Plaintiff* perceiving that the Jury would find for the Defendant, being call'd, *when they were ready to give their Verdict, would not appear*; However, the Court took the Verdict, which found for the Defendant, and assess'd Damages and Costs. 2 Sid. 155. 1659. B. R. Lacy v. Berry.

17. In Replevin, the Writ was in the *Detinet*, and the Plaintiff declared of a taking Goods at the Parish of St. M. &c. in a Place there called Maiden-Lane, and that ea injuste detinuit &c. The Defendant said, that the Place contain'd a Mesuage with the Appurtenances in the Parish of St. P. &c. and that H. M. was seised in Fee thereof, and demis'd it to the Defendant for 21 Years, and that the Defendant demis'd it to James Peddy for a Year at the Rent of 28 l. payable Quarterly, and avow'd for a Quarter's Rent. This Avowry, was held to be ill without Question, because the Caption of the Beasts in the Count ought to be traversed, and cited 21 E. 4. 64. 9. H. 6. 39. But exception being taken to the Variance &c. Detinet in the Writ and Detinuit in the Count, they agreed to amend on both Sides, and so that Point was not resolved; But Serjeant Lutwich says it seems a material Variance, for in the *Detinet* the Plaintiff shall recover as well the Value of Goods, as Damages for the Taking, and cites F. N. B. 69. (L) and Co. Ent. 610, 611. But when Writ and Count are in the *Detinuit*, he shall only recover for the taking, because this implies that the Plaintiff had his Goods again, and cites Hill. 14 E. 2. 421. 2 Lutw. 1147. 1150. Mich. 2 Jac. 2. Petree v. Duke.

18. Plaintiff in Replevin was *Nonsuit*, and on Error in B. R. *Judgment affirm'd.* Defendant shall not have Costs, because he is not within any of the Statutes as to Delay of Execution, and Statutes that give Costs shall never be extended beyond the Letter; For Costs are in the Nature of a Penalty. Carth. 179. Hill. 2 & 3 W. & M. in B. R. Coan v. Bowles. 1 Salk. 205. S. C.

19. In Replevin, the *Defendant avow'd and* the *Plaintiff being nonsuit brought* a Writ of *Second Deliverance*, whereupon it was moved to stay the Writ of Enquiry of Damages; Et per Cur. this is a Supersedeas to the Retorno habendo, but not to the Writ of Enquiry of Damages; for these Damages are not for the Thing avowed for, but are given by the Statute of 21 H. 8. cap. 19. as a Compensation for the Expence 12 Mod. 547. S. C. & S. P.

Expence and Trouble the Avowant has undergone. Salk. 95. pl. 6. Trin. 13 W. 3. B. R. Pratt v. Rutlidge.

20. No Costs in Replevin for the Defendant, if the *Plaintiff confesses the Plea in Abatement to be true.* 2 Lord Raym. Rep. 788. Trin. 1 Ann. Smith v. Walker and Nois.

21. In Replevin the Plaintiff *declares for the taking of his Cattle* in a certain Place called *B.* The Defendant *pleads in Abatement, that he took them in* a certain Place called *C. absque hoc quod cepit in præd' Loco vocat.'* B. prout &c. & pro returno habendo he avows &c. The *Plaintiff confessed the Caption to be in C.* and thereupon the *Avowant had Judgment that the Writ should abate, and for the Return of the Cattle.* It was Resolved by the Court, that would not have Costs; for the Statute 21 *H.* 8. *cap.* 19. does not extend extend to this Case, but gives Costs only when the Plaintiff is nonsuited, and the Statute of 7 *H.* 8. *cap.* 4. gives Costs only when the Plaintiff is barred; but here the *Plaintiff is neither barred nor non-suited, but the Writ only abates*; and he may have a new Writ, and is not put to his Second Deliverance. Comyns's Rep. 122. Trin. 1 Ann. in B. R. Smith v. Walgrave.

(D) In a Writ of Error.

19 *H.* 7. *cap.* 20. *confirms this Act, and enacts, that from thenceforth the same shall be put in Execution.*

1. 3 *H.* 7. *cap.* 10. *IF a Person bound by a Judgment before Execution sue a Writ of Error to reverse it, and the Judgment be affirmed, the Writ discontinued &c. the Defendant shall recover Costs and Damages.*

S. P. cited by the Reporter in a Nota. Lev. 146. in Case of Winne v. Loyd.

2. In Error of *a Judgment in C. B in Formedon* the *Judgment was affirm'd*; And it was moved to have Costs and Damages for the Delay of Execution upon the Statute H. 7. cap. 10. whereupon it was doubted, because it was in a Formedon in which (being the principal Action) no Costs were allowable; But notwithstanding, upon considering the Statute, which is General, viz. "That if a Writ of Error was brought "before Execution, and the Judgment be afterwards affirmed, the "Demandant or Plaintiff shall have Costs and Damages," And it mentions not any Action, they all resolv'd that *Costs and Damages shall be given* for Delay of Execution, *though in the first Action no Damages were recoverable*; and Judgment accordingly. Cro. E. 616, 617. pl. 1. Mich. 40 & 41 Eliz. B. R. Graves v. Short.

3. In all Cases of Writs of Error before the Judges and Barons *in the Exchequer Chamber*, they, at the Prayer of the Party, shall award Costs and Damages *to the Plaintiff in the first Suit for his Delay and Vexation*, and this by the Statute 3 H. 7. cap. 10 *But if the Plaintiff in the Writ of Error was Plaintiff in the first Suit*, then no Costs and Damages shall be given in Case *where the Plaintiff* or Demandant *has Execution of the first Judgment.* 2 And. 123. pl. 68. Anon.

5 Rep. 100. b. Penruddock's Case. S. C. but S. P does not appear.

8. Costs are allowable *in every Case where* a Writ of *Error is brought before Execution sued*, it is the Discretion of the Court what Costs shall be allowed, and though the Matter upon the Writ brought was doubtful, yet there was not any Case, but that Costs are allowable; But the Costs must not be denied by the Court, and therefore the Plaintiff in the Writ of Error was awarded to pay Costs. Cro. E. 659. pl. 4. Pasch. 41 Eliz. B. R. Penruddock v. Clark.

——S. C. cited in a Nota of the Reporter. Lev. 146. at the End of the Case of Winne v. Loid.

5. *Judgment*

5. *Judgment* was given *for the Defendant in C. B. and that Judgment was affirmed, and* 10 *l. Coſts given in B. R.* upon the Statute of 3 H. 7. It was moved, that the Coſts were not grantable, for the Statute is where Judgment is given againſt the Defendant, and he to delay the Execution brings a Writ of Error, and the Judgment is affirmed; but here the Judgment is given for the Defendant in C. B. ſo no Execution was to be awarded there againſt him; and although the Plaintiff brought the Writ of Error, and the Judgment be affirmed, yet it is out of the Statute; and of that Opinion was the Court, wherefore a Superſedeas was awarded to ſtay *Execution for the Coſts.* Cro. C. 401. pl. 10. Hill. 9 Car. in B. R. Bawton v. Nichols.

6. A *Judgment in Formedon in the Remainder being affirmed upon a Writ of Error* brought in this Court, it was *moved that the Defendant in* the Writ of *Error, being delayed in the Execution, might according to the Statute,* 3 *H.* 7. *have Coſts.* Reſolved, that becauſe there were no Coſts nor Damages recovered or allow'd in the firſt Action, ſo that no Execution is delayed but only for the Land, that no Coſts were allowable by that Statute. Cro. C. 425. pl. 15. Mich. 11 Car. in B. R. Smith v. Smith.

7. 13 *Car.* 2. *cap.* 2. *S.* 10. *If any Perſon ſhall ſue any Writ of Error for Reverſal of any Judgment given after Verdict in any of the Courts aforeſaid, and the Judgment be affirmed, ſuch Perſon ſhall pay the Defendant in Error double Coſts.*

If Adminiſtrator brings a Writ of Error he ſhall not pay any Coſts, though the Judgment be affirmed; for he is not a Perſon within the Intent of the Statute. Carth. 281. Trin. 5 W. & M. in B. R. Gale v. Till. ——3 Lev. 375. S. C. and the Court ſeemed to be of the ſame Opinion, but would adviſe; And Levins of Counſel for the Plaintiff, in the original Action, being ſatisfied with the Opinion of the Court, never moved it afterwards. ——4 Mod. 244. S. C. held accordingly.

8. *Sec.* 11. *This Act ſhall not extend to any Action popular, nor to any Action upon any Penal Law, except Debt for not ſetting out Tithes, nor to any Indictment, Preſentment, Inquiſition, Information, or Appeal.*

9. A Writ of Error was brought *to reverſe a Common Recovery in Wales, and Judgment* in the Common Recovery is *affirmed*; and now Williams moved for Coſts for the Defendant in the Writ of Error, according to 3 H. 7. cap. 10. and although there is not any Delay here according to the Words of the Statute, yet this is to be intended where Execution may be, but here is no Execution to be had; But the Court denied to give Coſts, becauſe there is *not any Delay of Execution,* and at the Common Law there were no Coſts in a Writ of Error. Raym. 134. Trin. 17 Car. 2. B. R. Winne v. Lloyd.

Sid. 213. pl. 12. S. C. but S. P. does not appear.—— Lev. 146. S. C. and per Cur. no Coſts ſhall be given on the Writ of Error, becauſe no Coſts or Damage in the Original Action.——It is ſaid, that Hill. 11 Geo. 2 B. R. in Caſe of **Ferguſon v. Rawlinſon,** it was held, that any Delay is good reaſon for Coſts, and ſo this Caſe was denied.

10. A Writ of Error on a *Judgment in C. B. in Ireland* was *affirmed in B. R. there, and Coſts awarded* to the Defendant in Error; A Writ of Error was brought here, and the Error aſſigned here was, that Coſts ought not to have been awarded upon ſuch Affirmance, becauſe our Statutes do not extend to Actions there. It was adjudged that the Judgment in B. R. in Ireland be reverſed quoad the Coſts only. Sid. 357. pl. 11. Hill. 19 & 20 Car. 2. B. R. Exham v. Coniers.

11. A Writ of *Error* was brought in Cam. Scacc. *on a Judgment in B. R. after Execution executed,* and therefore it was moved, that the Plaintiff be diſcharged of Coſts; Per Cur. this is not within the Statute 3 H. 7. cap. 10. becauſe *no Execution is hereby delay'd,* and alſo the Exchequer Chamber gives Coſts. 2 Keb. 391. pl. 79. Trin. 20 Car. 2. B. R. Harding v. Randall.

Court said, there was no Reason for such Distinction. Hill. 11 Geo. 2. B. R. Ferguson v. Rawlinson.

12. B. had *Judgment in an Ejectment* in C. B. *and Execution of his Damages and Costs. F. brings Error, and the Judgment is affirmed.* Whereupon *B. prays his Costs for his Delay and Charges*, but could not have them; for no Costs were in such Case at the Common Law, and the Statute of 3 H. 7. cap. 10. gives them only where Error is brought in Delay of Execution; so 19 H. 7. cap. 20. And here, though he had no Execution of the Term, yet he had it of his Costs. Vent. 88. Trin. 22 Car. 2. in B. R. Foot v. Berkley.

13. Saunders on 3 Cr. prayed Costs *in* a Writ of *Error on a Judgment in a Quare Impedit on Verdict against one, and on a Demurrer by the other*, Damages on 13 Car. 2. cap. [2. Stat. 2.] that where Judgment on Verdict is given, the Party shall have double Costs; the Court agreed on 3 H. 7. cap. [10.] that *if no Execution were had of the Presentation or Damages, the Party shall have Costs for Delay of Execution* in any Part, *but* on Cro. C. 425. Smyth v. Smyth, *no Costs can be after Execution executed*, because no Delay; the late Statute of 13 Car. 2. is only as to the Security, and by Rule of Court Costs were taxed Nisi. 2 Keb. 882. pl. 60. Hill. 23 & 24. Car. 2. B. R. Bucke v. Alton.

14. Holt said, if the *Defendant pleads in Bar of the Writ of Error, and has Judgment, that the Plaintiff be barred*, then the Defendant is to have no Costs; but where the Judgment is affirmed, the Defendant is to have Costs upon the Statute of 3 H. 7. cap. 10. Comb. 313. Hill. 6 W. 3. B. R. Fusee v. Rowe.

15. Where a Writ of Error is brought, if the *Party enters a Non Pros.* no Costs can be had; For the Statute gives Costs in a Writ of Error only where it is *in Dilatione Executionis*; Per Holt Ch. J. 5 Mod. 67. Mich. 7 W. 3. in Case of Winchurch v. Masely.

16. 8 & 9 *W.* 3. *cap.* 10. [11.] *If after Judgment for the Demandant the Plaintiff or Demandant shall sue a* Writ of Error, *and the Judgment shall be affirmed, or the Writ of Error discontinued, or the Plaintiff nonsuit therein, the Defendant or Tenant shall have Judgment to recover his Costs, and have Execution for the same by Capias ad Satisfaciendum, Fieri Facias, or Elegit.*

17. No Costs are to be had on a Writ or Error where the *Judgment is reversed.* 8 Mod. 314. Mich. 11 Geo. 1. Wivell v. Stapleton.

18. But it had been *otherwise* if the Judgment had been *affirmed.* 8 Mod. 314. Mich. 11 Geo. 1. Wivell v. Stapleton.

19. Where *Judgment was against two*, and a Writ of *Error is brought by one*, and quashed, the Defendant shall have Costs. 8 Mod. 316. Mich. 11 Geo. Cowper v. Ginger.

(E) On Demurrer.

1. AT this Day, if a Demurrer be *adjudg'd against the Plaintiff*, he shall not pay Costs, but *shall only be amerced.* Jenk. 161. pl. 7.

2. It was agreed upon Statute 23 H. 8. cap. 16. [15.] that if *in Debt* there *is a Demurrer which goes to the Action which is adjudged against the Plaintiff*, the Defendant shall have Costs, tho' it be out of the Words of the Statute, and that so is the Course of the Court, and had been always allow'd, *but if* the Demurrer *goes to the Writ only*, and it is adjudg'd against the Plaintiff, the Defendant shall not have Costs. And. 117. pl. 163. Hill. 26 Eliz. Anon.

3. *By*

3. *By Statute* 17 *Car.* 2. *cap.* 7. *S.* 3. *If upon an Avory in any of the Courts of Weſtminſter, Judgment be given on Demurrer for the Avowant, or him that maketh Conuſance for Rent, he ſhall recover Coſts.*

4. 8 & 9 *W.* 3 *cap.* 10 [11.] *S.* 2. *If any Perſon ſhall proſecute in any Court of Record any Action, wherein upon Demurrer Judgment ſhall be given againſt ſuch Plaintiff or Demandant, the Defendant or Tenant ſhall have Judgment to recover his Coſts, and have Execution for the ſame by Capias ad Satisfaciendum, Fieri Facias, or Elegit.* This Statute does not extend to Judgment given for Defendant upon a Demurrer to a Plea in Abatement; Per Holt Chief J. 12 Mod. 523. Trin. 13 W. 3. Anon.

5. *Aſſumpſit*; the *Defendant pleaded his Privilege as an Officer of the Exchequer in Abatement*, and the Plea being *held good upon Demurrer*, there was Judgment, quod Billa caſſetur; Et per Cur. it was held upon the 8 & 9 *W.* 3 *cap.* 11. That the Defendant ſhould have no Coſts, for the Act *extends only to Demurrers in Bar, and not in Abatement*, becauſe it ſpeaks of Suits which are vexatious, which does not appear to the Court on Pleas in Abatement, but on Demurrers in Bar, where the Court ſees the Merits of the Cauſe, it does, and it would be very hard if the Defendant ſhould have Coſts againſt the Plaintiff in ſuch a Caſe, when the Plaintiff could have none againſt the Defendant, tho' he ſhould have had Judgment, quod reſpondeat Ouſter. 1 Salk. 194. pl. 3. 10 W. 3. B. R. Thomas v. Lloyd. Ld. Raym. Rep. 336, 337. S. C. and S. P. held accordingly.——Comb. 482. Toms v. Loyd. S. C. accordingly, and the Court ſaid, that they could not take it for a Vexatious Suit where the Defendant has Judgment upon a Plea in Abatement only.——12 Mod. 195. S. C. held accordingly, and that it muſt be underſtood of a Demurrer where there is a Judgment final.——S P and the *Statute meant only to give Coſts, where the Merits of the Cauſe was determined upon the Demurrer* 1 Salk 194. pl. 4. Mich. 2. Ann. B. R. Garland v. Extend.——6 Mod. 88. Garden v. Exton, S. C. per Cur. accordingly; For if there was Judgment of Reſpondeas Ouſter for the Plaintiff, the Defendant ſhould have no Coſts; and cited the Caſe of Thomas v. Floyd where the ſame had been reſolv'd before.——2 Ld. Raym. Rep. 992. Garland v. Exton. S. C. and S. P. agreed.

6. 4 & 5 *Ann. cap.* 16. *Gives Coſts upon Inſufficiency of Matters in* Demurrers, *and on* Pleas *unleſs the Judge certify a probable Cauſe.*

(F) Where Defendant, or one or more of the Defendants ſhall have Coſts.

1. 23 *H.* 8. *cap.* 15. IF *a Plaintiff be nonſuit, or overthrown by Trial in any Action of Treſpaſs, Debt, Covenant, Detinue, Account, Action upon the Caſe &c. the Defendant ſhall have Coſts ſet by the Judge of the Court.* See tit. Nonſuit. (P) pl. 4. this Statute more at large, and the Notes there.——The Words of the Statute are confin'd to Wrongs done, or Debts, or Damages due to the Plaintiff or Plaintiffs, and therefore an Executor or Adminiſtrator is not within the Statute, and then the Plaintiff pays no Coſts; For the Teſtator is as it were Plaintiff by him, and he is not to recover to his own Uſe; but is Truſtee for the Creditors. Gilb. Hiſt. of C. B. 217.——So an Infant commencing his Suit by Guardian, there can be no Malice ſuppoſed in him. Gilb. Hiſt. of C. B. 218.

2. 24 *H.* 8. *cap.* 8. *No Coſts ſhall be awarded to the Defendant in Actions brought by the King.*

3. Where an *Original is diſcontinued*, the Defendant ſhall not have Coſts; *But after a Diſcontinuance in a Latitat*, the Defendant ſhall have Coſts by the Statute of 8 Eliz. cap. 2. Le. 105. pl. 142. Mich. 30 Eliz. C. B. in Caſe of Beal v. Underwood.

4. *Aſ-*

4. *Assumpsit*; a *special Verdict* was found, and thereupon *adjudged for the Defendant*; and it was now moved, whether the Defendant should have Costs by the Statute of 23 H. 8. cap. 15. for it was alleged, that that is to be intended where the Plaintiff is nonsuited, or a general Verdict passes against him, so as it appears that he has not any Cause of Action; but the Court ruled, that he should have Costs; for a *special Verdict* is as well a Verdict for him, for whom it is found, as a general Verdict, and there is not any Difference, when Judgment is given thereupon, but it is as if a general Verdict had been given for the Defendant, wherefore &c. Cro. E. 465. (bis) pl. 18. Pasch. 38 Eliz. B. R. Alsop. v. Cleydon.

Ibid. cites Pasch. 4 Jac. The Attorney General v. Willoughby & al' like Point. —— Noy 101. Doydidge v. Penkvoll. S. C. accordingly.

5. Where there were *several Defendants*, and *only one was sentenced*, the other had Costs, because not charged with the Offence for which the Sentence was, but with the other Offences of which they were acquitted. Mo. 770. pl. 1064. Mich. 3 Jac. in the Star Chamber. Dag v. Penkevell.

6. The *Plaintiff brought two Actions upon* 2 E. 6. *for treble Damages* &c. and *he is Nonsuited in one Action, and discontinues the other*, and held by the whole Court that the Defendant shall not have Costs by 8 Eliz. cap. or by 4 Jac. cap. 3. because if the Plaintiff had recovered he should have recovered but treble Damages only, by the Statute. Noy. 136. Mich. 7 Jac. B. R. Cox v. Small.

7. *Replevin* against A. and B. *A. pleaded Non cepit, and* it was *found against him. B. avow'd the taking for good Cause, and it was found for him.* It was moved for Costs against A. but [it was answer'd,] that no Costs ought to be given against him, because, the *other Issue being found for B. his Companion shews that, the Plaintiff had no Cause of Action*, and said it was so held within these two Years in B. R. in Case of **Denton v. Blencherville**, and the Court now seem'd of the same Opinion. 2 Roll. Rep. 140. Hill. 17 Jac. B. R. Anon.

Hutt. 78. Townley v. Steel S. C. the Court was divided.

8. In a *Ravishment of Ward*, brought by an Executrix of her own Possession; The Issue being upon the Tenure, and found for the Defendant the Question was upon the Statute 4 Jac. cap. 3. if the Plaintiff should pay Costs? Three Justices held that the Defendant should not have Costs, but Yelverton e contra. Cro. C. 29. pl. 3. Hill. 1 Car. C. B. Peacock v. Steers.

Mar. 9. pl. 25. S. C. but S. P. does not appear.

9. Error; After a *special Verdict*, and *argued at the Bar*, there *was a Discontinuance entered by the Plaintiff*, as it was agreed he might; It was moved, that Costs might be assessed for the Defendant; But the *Court doubted whether Costs might be assessed, because* there was *no Verdict given* in the Case. Cro. C. 575. pl. 19. Hill. 15 Car. B. R. Oxford (Earl of) v. Waterhouse.

10. In *Covenant against two* the *Plaintiff has Judgement by Default against one*, and the *other pleads Performance, which is found for him*; Resolv'd, that the Defendant shall have Costs upon the Verdict against the Plaintiff, and the Plaintiff shall not have either Costs or Damages against the other Defendant. Lev. 63. Pasch. 14 Car. 2. B. R. Porter v. Harris.

See tit. Nonsuit (P) pl. 8. this Statute and the Notes there.

11. 4 *Jac.* 1. *cap.* 3. *If the Demandant or Plaintiff be Nonsuit, or overthrown by lawful Trial in any Action whatsoever, the Defendant shall have Costs.*

12. In a *Warrantia Chartæ*, the *Count* was, *that the Defendant enfeoff'd him, and covenanted that he was seised of a good Estate in Fee*, and had Power to convey &c. *and that the Plaintiff should quietly enjoy it from all former Grants* &c. *except a Term of* 20 *Years to one B. of which seven only were to come, and*

and that the Defendant *would warrant the Premiſſes to him againſt all Men; and ſays, that at the Time* of the Feoffment *there were more than ſeven Years to come* of the ſaid Term, *and that one C. having Title entered and expelled the Plaintiff*, and the Defendant refuſed to Warrant the Tenements to him. Upon *Iſſue, that there were not more than ſeven Years to come of the ſaid Term*, the Defendant had a Verdict; and it was moved, that he ought to have Coſts upon the Statute 4 *Jac. cap.* 3. wyich gives Coſts to the Defendant in all Caſes where the Plaintiff would have Coſts if the Verdict be for him, and by the Statute of Glouceſter cap. 1. Coſts are given in all Caſes where Damages are to be recovered, and in a Warrantia Chartæ the Demandant ſhall recover Damages; and tho' in this Caſe of Eviction of a Term an Action of Covenant and not a Warrantia Chartæ had been the proper Remedy, yet ſince the Defendant will accept Judgment in this Action, he ought to have his Coſts; But the Reporter ſays Quære de ceo, for if the Action does not lie, Judgment ought to againſt him tho' the Verdict is for him. 3 Lev. 321. Mich. 3 W. & M. in C. B. Thomas v. Bligh.

13. Where the *Plaintiff diſcontinues with the Leave of the Court*, the Defendant ought to have his Coſts (as upon a Nonſuit) which cannot be Moderated; Per Holt Ch. J. Comb. 299. Mich. 6 W. & M. in B. R. Poole v. Purdy.

14. It was moved, that *one Defendant was put in by Fraud on Purpoſe that he might make no Defence*, but to ſecure the Plaintiff from paying Coſts, and therefore *prayed, that if the Plaintiff were Nonſuit, or the other Defendant had a Verdict, he might have his Coſts.* Holt Ch. J. I fear we cannot do it in any Caſe, unleſs in *Ejectment*, and there we'll not compell the Defendant to confeſs Leaſe, Entry, and Ouſter, unleſs the Plaintiff conſents. Comb. 364. Paſch 8 W. 3. in B. R. Wilcocks v. Powell.

15. 8 & 9 *W.* 3. *cap.* 10. [11.] *S.* 1. *Where ſeveral Perſons ſhall be Defendants in Treſpaſs, Aſſault, Falſe Impriſonment, or Ejectione Firmæ, and any of them ſhall be acquitted by Virdict, he ſhall recover Coſts &c. as if a Verdict had been given againſt the Plaintiff, and acquitted all the Defendants, unleſs the Judge before whom &c. ſhall, immediately after the Trial, in open Court certify upon the Record, under his Hand, that there was a reaſonable Cauſe for the making ſuch Perſon or Perſons Defendants.*

16 *S.* 3. *If the Plaintiff ſhall become Nonſuit, or ſuffer a Diſcontinuance, or a Verdict ſhall paſs againſt him, the Defendant ſhall recover his Coſts.*

In a *Scire Facias againſt Bail* which was *diſcontinued by* an ill Return, *being made to be on a Sunday*, now Coſts was pray'd, this being a Diſcontinuance within 8 & 9 *W.* 3. for the Words there are, where the Party ſuffers a Diſcontinuance. Holt. Ch. J. this *is only where the Party enters a Diſcontinuance, and not where it is only by Slip of the Clerks*, (as here) Prime v. Maſon. Mich. 6. Ann. —11 Mod. 120. pl. 6. Trin. 6 Ann. B. R. S. C. the Return was Die Lunæ in tres Septimanas Sanctæ Trin. the Court held it a void Writ; For there is no ſuch Day, it being on a Sunday.

17. *Four Perſons were arreſted* by a Latitat in Treſpaſs; *three of them appear* and put in Bail, and for want of a Declaration in Time *take three ſeveral Non Proſſes* againſt the Plaintiff, and upon a Motion to ſet thoſe Non Proſſes aſide for Irregularity, it ſhall it was held per Cur. to be well enough; for by the 8. *Eliz.* every Perſon is to have his Coſts &c. though at the firſt there was ſome Doubt with the Court, that there ought to have been one Non Proſs only, for until the Declaration it was a Joint-Action, whereby the Plaintiff might ſever his Demand, and make ſeveral Declarations. Trin. 8 Ann. B. R. Anon.

18. An *Information* was brought *at the Aſſiſes* againſt the Defendant *for Non-reſidence*, which being *remov'd into B. R. by Certiorari*, the *Defendant demurr'd for want of Juriſdiction*; and upon Argument *Judgment*

* See tit Actions Qui tam &c. (A. 8)

was given for him; whereupon it was mov'd for Costs upon the Statute of the * 18 Eliz. 5. and a Case of Cannon and Gooding Qui tam v. Nixon. Mich 6 Geo. 1. was cited, whereupon an Information on the Statute of the 1 & 2 P. & M. cap. 7. for selling Wares by Retail the Defendant demurr'd, C. for the want of a Joinder in Demurron the Part of the Informer, Costs were order'd for the Defendant. On the contrary it was insisted, that this Case was not within the Statute, there having been no Verdict, nor any Judgment upon the Merits; But the Court agreed it was clearly within the Words and Meaning of the Statute, for Judgment upon Demurrer is certainly a Judgment of Law, and if Informers should be allowed to bring Informations in Courts which have no Jurisdictions, without the Punishment of Costs, it would let in great Vexation, and the Statute be thereby wholly evaded; Whereupon it was referr'd to the Master &c. Mich 13 Geo 2. B. R. Garland qui tam v. Burton.

19. The Plaintiff had brought *two Ejectments for the same Premisses in C. B.* but *countermanded Notice of Trial just time enough to prevent his paying of Costs, and then brought another Ejectment in this Court*, upon which *Defendant mov'd that Proceedings might be stay'd in the last, till the Costs of the two former had been paid*; But the Court wou'd not do it, because the Countermand being proper, no Costs are legally due; But at another Day the Court finding it to be a Vexatious Proceeding, granted a Rule to stay the last Ejectment till the former were discontinued, and so the Plaintiff to make his Election which he would proceed upon; And it being objected that the Defendant; if he pleased, might have carried down either of the former to Trial, they said, they wou'd not oblige a Defendant in Ejectment to hazard his Possession by bringing on the Cause by Proviso; And the Ch. J. cited the Case of **Fenwick v. Lord Grolvenor** Salk. 258. where a Defendant in Ejectment, having Judgment against him, brought a Writ of Error, and, pending that, a new Ejectment, which was not allow'd of, and was called by Lord Holt a riding Ejectment. Mich. 12 Geo. 2. B. R. Thrustout on Demand of Park & Ux' v. Troublesome.

(G) Costs. In what Cases Defendant shall recover Costs in inferior Courts.

1. 8 *Eliz. cap.* 2. *S.* 3. *COSTS, Damages, and Charges, shall be awarded where the Plaintiff doth delay, discontinue, or is Nonsuit in the* Marshalsea, *and all other Corporations and* Liberties, where the Courts are kept de Die in Diem; *but there they are not so kept, then the Plaintiff must declare at the next Court after Appearance, unless he have longer Time allowed by the Court.*

2. 16 *Car.* 1. *cap.* 15. *S.* 5. *In all Cases where the Plaintiffs or Defendants are to have Costs by the Laws of this Realm, the Plaintiffs or Defendants shall have like Costs in the Stannary Courts.*

(H) What

(H) What Costs; where there are several Actions or Suits.

1. WHERE a Man *brings Debt in the Marshalsea*, or in London, or elsewhere, *upon an Obligation*, and *is longly delay'd there, and nonsuited*, and after *takes a New Suit in C. B. and recovers* and recovers his Debt, there he shall not recover his Damages for the Suit in the first Court, but *only for the Suit in C. B.* and for the Detinue &c. which is intended Damage, and the first Term of Damages is intended Costs. Br. Costs, pl. 24. cites 2 H. 4. 22.

2. *Where two bring Assise*, and the *one dies*, by which the Writ abates, and *another brings another Writ by Journeys Accounts, and recovers*, he shall have the Costs of the first Suit, per Bagot; Quod Nota. Br. Costs, pl. 15. cites 9 E. 4. 5.

3. If a *Writ doth abate by the Act of God*, in a *new Writ by Journies Accounts* he shall have Costs for the first, and the Proceedings thereupon; *but if the first Writ be faulty* in Default of the Demandant or Plaintiff, in the 2d Writ the Demandant or Plaintiff shall have no Costs for such an insufficient or faulty Writ. 2 Inst. 288. See Keilw. 127. b. pl. 92. Casus incerti Temporis. Anon. S. P.

4. In *Trover* in B. R. the *Court were divided in Opinion as to the Sufficiency of the Declaration, and continuing divided* upon several Motions, *the Plaintiff for Expedition consented that Judgment be entred against him*, and so it was, *Quod nihil capiat* per Billam; and then the *Plaintiff began a new Action* in C. B. *and amended that Fault in his Declaration, and had Judgment by Confession* of the Action, *and only* 3 *l. Damages* given by a London Jury, and thereupon Hendon moved in this Court to have Costs in his former Action, but because the Verdict was found for the Plaintiff, and upon Exception to the Declaration Judgment was given against him; the Court held that no Costs should be given. Cro. C. 545. pl. 10. Pasch. 15 Car. B. R. Sir Martin Lyster v. Home. Mar. 12. pl. 32. S. C. but S. P. does not appear.

5. A. *recovered in Trespass* in C. B. and thereupon the *Defendant brought Attaint*, and it was found against him. The Defendant in the Attaint shall not have Costs in the Attaint by the Statute 23 H. 8. [cap. 15.] nor by any Statute which gives Costs for the Defendant. Jo. 432. pl. 2. Pasch. 15 Car. B. R. Davies v. Bellamy. Mar. 24, 25. pl. 55. S. C. Costs were pray'd upon this Rule, that where the Plaintiff shall have Costs the Defendant shall have Costs; But they were denied by the Court; For that ought to be taken in the original Action, and not in Case of Attaint; But upon the Restituatur Costs shall be given; But that is in the original Action.——Cro. Car. 542 pl. 6. Daly v. Bellamy S. C.

If the first Verdict had passed for the Plaintiff, whereby he should have had Costs, or if it had passed so as he brought Attaint, and the Jurors had been attainted, he should have such Costs as he had in the first Action, but he should not have had more Costs in respect of the Attaint; So e converso where the first Verdict passed for the Defendant, and he had Costs, if the Verdict be impeached by Attaint, or affirmed, he shall have no more Costs, but only those which are given upon the first Verdict. Cro. C. 542. pl. 6. Pasch. 15 Car. B. R. Daly v. Bellamy.

6. The *Lessor of the Plaintiff is liable* to pay Costs (though he shall never be forced to give Security for them) but the *Lessor of a Tenant in Possession is not liable* to Costs, because though he may come in Gratis and defend his Title, yet the Tenant in Possession is [not] liable to Costs by the Law, but only by the Course of the Court, *unless the Trial be by the Lessor's Means brought to the Bar, and then he shall never have a 2d Trial at Bar before he has paid the Costs of the former* Trial; But yet the Court for Non-payment of Costs will not hinder Proceedings in the Country; Per Cur. Keb. 106. pl. 117. Trin. 13 Car. 2. B. R. Lattam v. The Lessor of the Plaintiff by several Rules of Court on Demand ought to pay Costs upon the Insufficiency or Skulking of the Plaintiff in Ejectment.

Keb. 17. pl. 50. Pasch. 13 Car. 2. B. R. in a Nota there.

7. Upon

7. Upon *Verdict againſt all Evidence* the Court will tax Coſts, and will not ſuſpend it till the new Trial. Keb. 294. pl. 222 Paſch. 14 Car. 2. B. R. Davies v. the Corporation of Droitwich

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11. If a Perſon incloſes Land in a Town under a Cuſtom for that Purpoſe, and another brings an Action againſt him, in order to try that Right, and a Bill is thereupon brought in order to eſtabliſh the Cuſtom; If, upon an Iſſue directed in that Cauſe to try the Cuſtom, it is found againſt the Defendant, yet the Plaintiff ſhall not have the Coſts which were incurr'd in the Court of Equity, becauſe in ſuch Caſe the bringing a Bill was not neceſſary; But where 8 *ſeveral Perſons incloſe Land under a Cuſtom* for that Purpoſe, *another brings* 8 *Actions againſt them* on that Account, and a *Bill is* thereupon *brought to eſtabliſh the Cuſtom*, and to ſtay the Proceedings in thoſe Actions; If upon an *Iſſue directed* in that Cauſe to *try the Cuſtom, a Verdict is found in Favour of it*, the Defendant ſhall pay the Coſts in Equity as well as at Law; For in this Caſe the Defendants at Law were put under a Neceſſity of bringing their Bill to ſtop ſuch Multiplicity of Actions, and the bringing ſo many was moſt vexatious. Barnard. Chan. Rep 437. Paſch. 1741. Codrington v. England.

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In an Action upon the *Statute of forcible Entry* upon the Statute of 8 *H.* 6. which gives treble Damages, In this Case the Plaintiff shall recover his Damages and his Costs to the treble, for that he should have recovered single Damages at the Common Law, and the Statute increased them to treble. 2 Inst. 289.

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5. *Assise against two of two Manors*, the *one was found a Disseisor with Force of one Manor*, and *the other acquitted* of the Disseisin *of this Manor, but of the other Manor he was found a Disseisor, but not with Force*, and the other was of this acquitted, and the *Costs were taxed to* 20 *l.* and because the Costs ought to be against both, for they are entire, and against him who is found Disseisor with Force, the Costs shall be treble as well as the Damages, therefore their Opinion was, that the 20 l. shall be adjudg'd *against both in Common*, and 40 *l. over against him who was found Disseisor with Force*, and so he recover'd 40 l. Br. Costs, pl. 20. cites 12 E. 4. 1.

6. In an Action upon the Statute of 5 *Eliz. for Hunting in his Park*, the Statute gives treble Damages. It was the Opinion of the Justices, that notwithstanding that the Statute gives treble Damages, that the Plaintiff should have Costs also. 4 Le. 36. pl. 98. Mich. 27 Eliz. B. R. Onion's Case.

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8. It was resolved upon the Statute of 2. *E.* 6. that the Statute giving treble Damages, the Jury cannot give other Damages, and that the Jury cannot give Costs. Mo. 915. pl. 1294. 44 Eliz. Day v. Peckvell.

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Gilb Hist. of C B 215, 216 S P.— New Abr. 515 S P. in totidem Verbis as in Gilb.

9. In an *Action Real Personal or Mixt*, where double and treble &c. Damages are given by any Statute, it has been controverted in Books, whether the Demandant or Plaintiff shall recover Costs, and whether the same shall be also doubled or trebled, which Doubt and Variety of Opinions has grown in respect the right Reason of the Diversity of the Law in those Cases, has not been observed, which is, that *whensoever any Statute does increase Damages to the double or treble* Value &c. *where Damages before were given*, there the Demandant or Plaintiff shall recover his double or treble Damages and Costs also, and the Costs also as Parcel of the Damages shall be trebled. 2 Inst. 289.

S P. because the Party can have nothing more than such a new Statute has

10. Where *Damages* double or treble are *in an Action newly given, where no Damages were* formerly recoverable, there the Demandant or Plaintiff shall recover those Damages only, and no Costs. 2 Inst. 289.

already given, and that is Damages only, and the Statute of Glouceſter cannot operate to add Costs to what is given by a subsequent Statute, because the new Statute must be construed from itself, which gives Damages only, and therefore for the Court to give Costs in such Case, would be to go beyond the Intention of the Legislature in that Statute. Gilb. Hist. of C. B. 216. —— New Abr. 515. S. P. in totidem Verbis. —— Hard. 152. Arg. S. P.

11. Upon the Statute 1 & 2 *P. & M. for chasing of Distresses out of the Hundred* &c. whereby *5 l. is given and treble Damages*, the Plaintiff shall recover no Costs, because this Action and Penalty is newly given. 2 Inst. 289.

12. In *Assise for Disseisin done with Force* the Plaintiff shall recover Treble Damages and his Costs also, because at common Law the Plaintiff should recover Damages and Costs in both Cases; For the Statute of 8 H. 6. cap. 9. is only an Act of Addition. Per Cur. 10 Rep. 116. b. Mich. 10 Jac. B. R. in Pilford's Case says, that with this agrees. 14 H. 6. 13. a. 19 H. 6. 32. a. 22 H. 6. 57. a. 12 E. 4. 1. a. F. N. B. 248. (C)

Cro. J. 343. pl. 9. S. C. and Judgment affim'd Quoad Part, and reversed as to the Residue.

13. In *Case for two Slanders spoken at several Times*, the Defendant pleaded Not Guilty; The Jury gave separate Damages, and Intire Costs. *One of the Slanders was not actionable*, but the other was. Judgment was not reversed in the Exchequer Chamber as to the Words not actionable Quoad the Damages, and affirm'd for the other Damages and intire Costs Jenk. 339. pl. 89. 12 Jac. Jacob v. Miles.

Powell J. said he had known the Case of Jacob v. Mills denied to be Law many a Time, and that there are 20 Resolutions to the Contrary, viz. if a Remittitur be not entred for Part, it will be bad for the whole; For the Judgment is of the whole; and the Court were all of Opinion, that if one of the Declarations were such on which no Damages ought to be recover'd, it would be bad. 7 11 Mod. 155. Hill. 1 Ann. B. R. —— S. C. cited and denied per Curiam. 11 Mod. 25. in pl. 2.

Lat. 140. Trin. 2 Car. Watkinson v. Pacy, S. C. held accordingly; for the Words of the Statute are, that he shall have Consultation

14. W. *sues P. in the Spiritual Court for Tithes* of a Dove-House. *P. upon Suggestion had a Prohibition, but he did not prove his Suggestion within the* 6 *Months.* W. takes Issue upon the Suggestion, and it is found against him, and yet he *prays Costs* by the * Statute 2 Ed. 6. [cap. 13. S. 14.] *for Failure of Proof within the* 6 *Months.* But by the Court adjudged, that he shall not have it, for he hath *surceased his Time* to take Advantage of that, and he can never have a Consultation; Ergo, he shall not have double Costs. Read the Words of the Statute. Noy 81. Watlington v. Perry.

and double Costs if the Plaintiff in the Prohibition does not prove his Suggestion; but here he never can have a Consultation, because the Matter is passed against him; but upon Failure of Proof he should have pray'd a Consultation, and then should have double Costs.

* See Tit. Prohibition (D. a. 2) pl. 1. and the Notes there.

S. P. But had it been for other Collateral Matters only it might

15. Treble Costs on a Judge's Certificate were given *to a Collector of the Land-Tax*, in an Action brought against him for distraining for 20 s. assessed by the Statute of 1 W. & M. Show. 214. Pasch. 3 & 4 W. & M. Willet v. Tidney.

have been otherwise. Carth. 188. S. C. —— 12 Mod. 6. S. C. the Action was for Money receiv'd to the

the Plaintiff's Use; the Defendant justified as Collector of the Land-Tax; It was urged, that it is not Matter concerning his Office; For it may be for Money received to his own Use, or for Overplus of Distress not return'd; And Holt Ch. J inclined, that if the Action was brought for Overplus not return'd, this does not touch his Office, and he does not use the Statute for Defence; But because it was certified by the Judge of Assise that it was within the Statute, the Defendant had treble Costs.

16. In *Rescous* of *Distress for Rent*, per 2 W. & M. cap. 5. Plaintiff shall recover treble Costs as well as treble Damages, for the Damages are not given by the Statute, but *increased*, an Action on the Case lying for a Rescue at Common Law. 1 Salk. 205. pl. 2. Hill. 5 W. & M. Lawson v. Story.

S. C. Skin. 555. cites 10. Rep. Pinfold's Case, that Damages in such Case being given by the Common Law, and it was ruled that Costs *De Incremento* shall be treble also, and so upon Debate it was ruled in C. B. in the Case of Sandys v. Child, affirmed here in a Writ of Error; and tho' the Case in Rolls Costs 517. be that the other is the more sure Way, yet per Holt Ch. J. Costs De Incremento are also double &c. in all Cases of Officers &c.—Carth. 321. S. C. resolv'd after several Debates.——Ld. Raym. Rep. 19. S. C. adjudg'd; For the Word (Treble) shall be referr'd as well to the Word Costs as to the Word Damages.

17. It is a Rule, that in all Cases where *Damages and Costs* are *given at Common Law, and a Penalty is added by a Statute with double Damages*, that also draws double Costs. Carth. 297. Hill. 5 W. & M. in B. R.

18. *Debt for the Penalty for acting as a Commissioner of the Land-Tax, not having* 100*l. per Ann.* The *Plaintiff was nonsuited*; the *Defendant had his Costs tax'd, and paid by the Plaintiff, and a Receipt given.* Afterwards the Defendant, apprehending that he was intitled to treble Costs, got the Judge who try'd the Cause to certify that he was an acting Commissioner, whereupon he had treble Costs tax'd, and took the Plaintiff in Execution for Non-payment of them; to set aside which the Court was moved, and per tot. Cur. the *Defendant concluded himself by receiving single Costs*, and so the Execution bad. MS. Rep. Mich. 5 Geo. B. R. Vincent v. Strode.

19. *Where Damages were recoverable at the Time of making of the Statute of Gloucester*, there the *Plaintiff shall recover his Costs*, which is by the plain Meaning of the Statute, which says, the Plaintiff shall have Costs wherever he has Damages; *but if* there are *several Issues found for the Plaintiff*, or against the Defendant, *intire Costs are given upon the whole Pleadings*; for it is the whole Charge the Plaintiff was at. Gilb. Hist. of C. B. 215.

New Abr. 515. S. P. in totidem Verbis.

(K) To Officers and Ministers of Justice. Where they are Defendants.

1. 7 *Jac.* cap. 5. 1. IF *any Action upon the Case, Trespass, Battery, or False Imprisonment, shall be brought against any Justice of Peace, Mayor, or Bailiff of a City, or Town Corporate, Headborough, Portreeve, Constable, Tithingman, Collector, of Subsidy of Fifteenths, for any for any any thing by them done by reason of their Offices, it shall be lawful for every such Justice of Peace, or other Officer, and all others which in their Assistance, or by their Command, shall do any thing touching their Offices, to plead their Issue, Not Guilty; and if the Verdict pass with the Defendant, or the Plaintiff become Nonsuit, or suffer any Discontinuance, the Judge before whom the Matter shall be tried shall allow the Defendant double Costs.*

This Statute extends to one Acting under a Justice of Peace. Clayt. 54 Wenpenny's Case. —— Made perpetual 21 Jac. cap. 12.

2. The Court seem'd of Opinion, that a *Deputy-Constable* is within the Statute 7 Jac. cap. 5 because he comes in Right of the Constable, and represents his Person, and Coke Ch. J. thought that an *Under-Sheriff* is within this Statute, which Bridgman of Counsel for the Plaintiff agreed.

Mo. 845. pl. 1141. S C. resolved, that a Deputy-

Constable is within the Equity of the Statute as to pleading the General Issue. greed. Roll Rep. 274, 275. pl. 49. Mich. 13 Jac. B. R. Phelps v. Winscombe.

——3 Bulst. 77, 78. S. C. Doderidge J. held, that the Statute for double Costs extended only to the Constable, and are thereby given to him only; but Coke Ch. J. held e Contra; But [at last] the whole Court agreed in Opinion against the Plaintiff, that the Defendant, as Deputy-Constable, may have the Benefit of the said Statute to have double Costs, but no Judgment was given, the same being adjourned, and never mov'd again, but ended (as the Reporter says he heard) by Agreement between the Parties, perceiving which way the Court inclin'd in their Opinions against the Plaintiff.——This Statute extends to *one who acts under the Warrant of a Justice of Peace, though he is no Officer*, who did execute the Warrant; and says, this seems to be warranted by the Words in the Statute, viz. Any other who do any thing by Command of Justices of Peace, and other Officers therein named. Clayt. Rep. 54. pl. 93. August Assises, 13 Car. Coram Berkley J. Wenpenny's Case.

3. 21 *Jac.* 1. *cap.* 12. *S.* 3. *All Churchwardens and Persons called Sworn-men executing the Office of Churchwardens, and all Overseers of the Poor, and others which in their Assistance, or by their Command, shall do any Thing touching their Offices, shall have such Benefit by the Act* 7 *Jac.* 1. *cap.* 5. *as if they had been named therein.*

4. Trespass by Husband and Wife for *Battery* done to them both, Ad Damnum ipsorum, it was found that the Defendant did it *as Constable in Execution of his Office*, and found for the Defendant; He prayed double Costs, according to the Statute 7 *Jac. cap.* 5. The Baron and Feme cannot join for a Battery done to them both, and so the Declaration and Writ ill, yet it was adjudged, that he being found Not Guilty, and what he did was as Officer, should, according to the Statute, have double Costs. Cro. C. 175. pl. 20. Mich. 5 Car. in B. R. Heyler's Case.

Jo. 305 pl. 15. S. C. accordingly For the Statute said does not extend to Church Wardens for Things of the Office in Ecclesiastical

5. T. S. brought an Action on the *Case against the Churchwardens, for falsly* and malitiously *presenting in the Spiritual Court* on a pretended Fame of Incontinency; the *Churchwardens had a Verdict*, and they moved for double Costs, because they were troubled for a Matter concerning their Office; But held not to be within the Statute [21 Jac. cap. 12.] For the Statute intended only where they were vex'd for Temporal Matters, which they shall do by Virtue of their Office, and not for Presentments concerning Matters of Fame. Cro. C. 285. pl. 31. Mich. 8. Car. B. R. Kercheval v. Smith.

Causes.——S. C. cited 12 Mod. 6.

S. C. cited Show. 215 Arg. —— S. C. cited Arg. 12 Mod. 6. And Holt Ch J. inclined to that Opinion.

6. Case, for that the Plaintiffs were Inhabitants, and possessed of Lands for Years, in the Parish of St M. and liable to the Payment of Duties for the Reparation of the said Church, and the *Defendant being Constable* of R. *falsely represented, that they were Inhabitants of the Parish of* R. *& possessed of Lands within the Parish of R. and chargeable there for the Payment of* such *Duties which they were unduly compelled to pay.* Upon Not Guilty *found for the Defendent*, it was prayed upon the Statute 7. *Jac. cap.* 5. that he might have double Costs. Resolved the same was out of that Statute but within the Statute of 23 *H.* 8. which gives only single Costs to the Defendant. Cro. C. 467. pl. 5. Trin. 12 Car. in B. R. Stone v. Lingar.

7. On *Removal of an Order to reimburse an Overseer of the Poor* in his Expence *about a Suit for the Parish*, the Court conceived that Costs may be allowed upon a *Certiorari*, as in Haslefoot's Case on *removal of Order of a Bastard-Child*, and per Cur. Costs were allowed against the Town of Barwick St. John. 2 Keb. 500. pl. 63. Pasch. 21 Car. B. R. Cusse v. Monke.

8. E. brought an *Action against the Collector of the King's Tax, who brought it down* to Trial *by Proviso*, and there the *Plaintiff was nonsuit*; and now the Defendant moved for Costs in Triplo. Note, the *Judge could not certify*

certify in this Case *that the Defendant was sued as Collector, because the Plaintiff was nonsuit before Evidence.* Holt Ch. J. said, it must appear then by Affidavits, and there must be a special Entry; Quia super examinationem apparet Cur. &c. Comb. 322. Pasch. 7 W. 3. B. R. Sir Philip Egerton's Case.

9. The Plaintiff having *discontinued his Action*, which he brought *against an Officer, who justified as such in the Execution of his Office*, it was moved for double Costs upon the Statute 4 Jac. 1. cap. 3. and a Rule was made to shew Cause. 2 Barnard. Rep. in B. R. 171. Trin. 5 Geo. 2. Anon.

(L) In what Cases there shall be full Costs, or no more Costs than Damages.

1. 43 *Eliz. cap.* 6. *S.* 2. *IF in Actions Personal at Westminster not be ing for any Title or Interest of Lands, nor concerned the Freehold or Inheritance of any Lands, nor for any Battery, it shall appear to the Judges, and so signified or set down by the Justices before whom the same shall be tried, that the Debt or Damages to be recovered therein shall not amount to* 40 *s. or above, the Judges shall not award for Costs to the Plaintiff any more than the Sum of the Debt or Damages so recovered shall amount unto, but less, at their Discretion.*

The *Intention* of the Statute of Eliz. *was to reduce all Actions, where the Debt or Damage was under* 40 *s. into the Court*

Baron, or other County Courts, whereby they thought the Profits of Landlords would be encreased, and the Costs of Defendants diminished; but the Statute failed of effecting that Purpose, because they do not put it merely upon the Damages given by the Jury under 40 s. for indeed that would have been hard, where the Jury gave too little Damages, to have punished the Plaintiff with the Loss of his Costs, therefore they put it, that the Judge must certify the Damages proved were not above 40 s. in Approbation of the Verdict; but the Judges thought it extreamly hard to certify in order to make Plaintiffs lose the Costs where they had not prevailed, unless the Action were exceeding impertinent and vexatious. Gilb. Hist. of C. B. 213, 214.——New Abr. 512. S. P. in totidem Verbis.——No Doubt but this Statute was intended to bring back all Personal Actions, but prov'd ineffectual; For as it was worded, it *did not take away Costs De Incremento from the Courts of Westminster* if the Damages were under 40 s but they only gave Liberty to the Judge, where Damages were under 40 s. to certify against the Plaintiff having Costs, unless in Case of Battery, or where Title of Freehold or Inheritance came in Question; but because it was hard, that when a Man had asserted his Right, he should pay Costs for it, and that if one injured another under the Value of 40 s. that he should not be redressed in the King's Courts, they never used this Power of certifying; but thus it stood till the Statute of 22 & 23 Car. 2. cap 9. Gilb. Hist. of C. B. 211. ——Gilb. Equ. Rep. 195. Hill. 12 Geo in the Exchequer in Case of Reeve v. Butler, S P. and Ibid. 196. Marg. is a Note, that the Ch. Baron said, that he could find no Precedent of any Certificate pursuant to the Statute in any of the Books of Entries —— The Interpretation of the Statute of Glocester was, that though the Jury was to settle the Costs of the legal Proceedings, because these were Matters of Law to which the Jury could not answer; And thus it stood till 43 Eliz. cap. 6. [S. 2.] prout supra. Gilb. Equ Rep. 195. Hill. 12 Geo. in the Exchequer, in Case of **Reeve v. Butler**. And says, that this Statute is pretty darkly penn'd, and therefore he believes it had very little or no Effect.

2. 21 *Jac. cap.* 16. *S.* 6. *In Actions upon the Case for slanderous Words in any Court, if the Jury assess Damages under* 40 *s. the Plaintiff shall recover only so much Costs as the Damages so assessed shall amount unto, without any Increase of the same.*

This Statute is a direct *Repeal of the Statute of Glocester, quoad* these

Actions of Slander, where there were no more Costs than Damages; and it takes away these Costs De Incremento by express and positive Words; Per Lord Ch. B. Gilbert. Gilb Equ. Rep. 196. Hill. 12 Geo. in the Exchequer, in Case of Reeves v. Butler.

3. Nota, Mich. 5 Car. C. B. it was said by Richardson to be the Resolution of all the Justices of B. R. and C. B. that in an Action upon the *Case for Slander, though the Court are bound by* 21 *Jac. cap.* 16. and

cannot increase the Costs where the Damages are under 40 s *yet the Jury are not* bound by that Statute, and therefore they may give 10 l. Costs where they give but 10 d. Damages. 1 Salk. 207. in Case of Brown v. Gibbons.

4. Action, for that the Defendant falsely and maliciously spake these *Words* of the Plaintiff, viz. that *the Plaintiff committed Felony, and procured him to be arrested* for Felony, *and to be imprisoned for three Days*, and was found against the Defendant generally, and Damages to 20 s. it was pray'd, upon the Statute of 21 Jac. that he might have no more Costs than Damages, the Damages being under 40 s. But resolv'd, that this Case was out of the Statute, and full Costs were awarded to the Plaintiff. Cro. C. 307. pl. 7. Hill. 9 Car. B. R. Blizard v. Barns.

S. C. cited Cro. C. 307.

5. Action for *calling him Thief, and procuring him to be indicted and imprison'd for Felony, until he was acquitted*; Upon Not Guilty found for the Plaintiff, and 10 s. Damages, it was mov'd upon the Statute of 21 Jac. cap. 16. that Plaintiff should have but 10 s. for Costs. The Court conceiv'd, that because this is not an Action for Words only, but also an Action upon the Case, in the Nature of a Conspiracy, and the Defendant is found Guilty of both, the Defendant shall have Judgment for his ordinary Costs, and that it is out of the Statute. Cro. C. 163. pl. 5. Mich. 15 Car. B. R. Topsal v. Edwards.

6. 21 *Jac. cap.* 16. which prohibits more Costs than Damages in Case *for Words*, if the Jury give under 40 s. Damages, does *not extend to Courts Baron*; For if it were, this Act would totally take away their Power of giving Costs De Incremento in such Cases to more than 40 s. For the Jury there can in no Cases gives Damages beyond 39 s. 11 d. (for if they do so the Court will have no Jurisdiction in the Cause) and consequently the Court in no such Case could give Costs De Incremento above 40 s. which was never the Intent of the Act; but this Act ought to be intended of Courts, in which the Jury may, if they please, give more than 40 s. Damages; but in Courts Baron they cannot; And by Wright Serjeant, (who was not concerned in the Cause as Counsel) *Costs De Incremento, according as the Case requires, are given in all Courts Baron* in England, notwithstanding the Act of Jac. 1. Lord Raym. Rep. 181, 182. Pasch. 9 W. 3. C. B. Littlewood v. Smith.

7 Mod. 129. S. C. and the Court agreed to the Difference between an Action for Words actionable in themselves, and by Reason of Consequential Damage.

7. Case for *slanderous Words spoken of his Wife*, that she was a Whore, *Per quod he lost such and such Customers*; Damages under 40 s. This is not within the Statute; for it is not the Words, but the special Damage, which is the Cause of Action in this Case, and upon Evidence it is not sufficient to prove the Words, but the special Damage also; for the Husband may bring this Action alone. So in an Action for slandering his Title, the Plaintiff shall have his full Costs. 1 Salk. 206. pl. 5. Hill. 1 Ann. B. R. Brown v. Gibbons.

Ibid. the Court said, that in Trinity Term, 5 Geo. Pixton v. Anderton, this very Point was debated, (viz.) whether a Fact laid by way of Aggravation, which was only a Consequence of speaking the Words, should bring it out of the Statute, and entitle the Plaintiff to full Costs; and resolved, that where the Thing laid in the Declaration by way of Aggravation would bear an Action of itself independent of the Words &c. in such Case full Costs should be given; and that it is the constant Difference in such Cases, that *where the Words spoken are the very Gist of the Action, though other Things are laid by way of Aggravation, there shall be no more Costs than Damages*, for the Jury in such Case

8. Case for *scandalous Words, and that the Defendant procured the Plaintiff to be arrested for Felony*, and the *Jury gave 1 s. Damages*. It was said, that If a *separate Fact* be *laid in Aggravation, and as a Consequence of speaking the Words*, it might be doubtful, whether full Costs ought to be allowed. The Court inclined, that the Plaintiff should have full Costs. 8 Mod. 371, 372. Trin. 11 Geo. Phillips v. Fish.

Case can have no Consideration in giving their Verdict what was laid by way of Aggravation; *but if the Action was founded on Special Damages, there the whole should be under their Consideration.*

9. In an *Action for Words* brought by the Plaintiff against the Defendant, the Plaintiff set out in his Declaration, that he was a House-Smith by Trade, and that the Defendant spoke the Words of him, *(which Words were actionable in themselves) and by reason of the speaking which Words, the Plaintiff had lost several Customers, naming them particularly* &c. *to his Damage of* 100 *l.* On the general Issue pleaded, the Jury found for the Plaintiff, and gave him only 5 s. Damages. The Court directed the Plaintiff should have no more Costs than Damages. 2 Ld. Raym. Rep. 1588, 1589. Trin. 5 & 6 Geo. 2. B. R. Burry v. Perry.

But, per Cur. *where the Words are not actionable, but the the Action is maintained by reason of special Damages the Plaintiff has sustained* upon Account of the Words, the Plaintiff shall have full Costs, though the Damages are under 40 s. *for it is not the Words, but the special Damage is the Cause of the Action*, and cites 1 Salk. 206. Brown v Gibbons; but where the Words are actionable of themselves, as in the present Case, and special Damages are laid by way of Aggravation, and Damages are under 40 s. there shall be no more Costs than Damages, for that is properly an Action for Words within the Statute of 21 Jac. cap. 16. and as to the Cases cited of Carter v. Fish, and Phillips v. Fish, upon considering that Declaration the Court held, that as it was laid, it was not barely laid in Aggravation of Damages, but was a distinct Cause of Action, importing Crimen Feloniæ ei imposuit, and therefore the Plaintiff there had full Costs. —— 8 Mod. 371, 372. Phillips v. Fish, S C. & S. P. the Court said, that the Action in this Case was founded on the Words spoken, and that the procuring the Plaintiff to be arrested for Felony is laid in a different Count, and the Defendant is found guilty generally, and therefore the Court inclined that the Plaintiff should have full Costs.

10. In an *Action for Words importing Felony, As he stole my Hens &c. and laid by the way of Aggravation of Damages, and that he carried him before a Justice of Peace, and caused him to be imprisoned* &c. The Jury gave under 40 s. Damages, and yet after several Motions in Court, Trin. 11 Geo. 1. B. R. the Court made a Rule, that the Plaintiff should have full Costs. Ld. Raym. Rep. 1588. Arg. cites it as the Case of Phillips and Fish, and Carter and Fish.

11. 22 & 23 *Car.* 2. *cap.* 9. *S.* 136. (149) Enacts, that for making the Statute of 43 Eliz. cap. 6. more effectual, that *in all Actions of Trespass, Assault, and Battery, and other Personal Actions wherein the Judge at the Trial shall not find and certify under his Hand upon the Back of the Record, that an Assault and Battery was sufficiently proved, or that the Freehold or Title of the Land mentioned in the Declaration was chiefly in Question &c. if the Jury find the Damages under* 40 s. *Plaintiff shall not recover more Costs than Damages &c. and if any more Costs shall be awarded the Judgment shall be void, and the Defendant &c may have an Action against the Plaintiff for such vexatious Suits, and recover his Damages and Costs of such his Suit, in any of the Courts at Westminster.*

This Statute likewise did *not repeal the Statute of Gloucester*, for a *Statute cannot be repealed by Implication*; and therefore the Judges construed it, that the Costs De Incremento ought still to arise in all such Personal Actions, where the Judge's Certificate was not necessary in order to the obtaining of Costs, and that was not only by the Statute in two Cases, where Trespass was done to the Freehold, or to Things fixed to the Freehold, and the Damages under 40 s. and in Battery, where the Damages were under such Sum. Gilb. Hist. of C. B. 212.

Therefore, if the Defendant justified by any thing that brought the Title of the Land in Question upon the Record, there the Judge shall not certify in order to intitle the Plaintiff to his Costs, for it was not a Case within the Statute. 2dly, If it was an Action of Trover, or Trespass de Bonis Asportatis of Goods and Chattles not fixed to the Freehold, it was out of the Statute, and no Certificate necessary to intitle the Plaintiff to his Costs, and therefore the Plaintiff had Costs De Incremento on the Statute of Glouceſter So 3dly, If an Action of Trespass to the Freehold, and an Action of Trespass De Bonis Asportatis were joined, and the Plaintiff recovered in general upon both Counts, he had no need of a Certificate to obtain his Costs; and therefore Costs De Incremento went upon the Statute of Glouceſter. Gilb. Hist of C. B. 212.

This Construction of the Judges of the Statute of King Charles, seems to be very right from the 8 & 9 W. 3. cap. 11. for the Inconvenience was found, that the People did Trespass upon their Neighbours, yet not so as to the Value of 40 s. and so they could have no Redress at the Courts of Westminster without losing their Costs in such Actions, and therefore by that Statute a 3d Manner of Certificate was given. Gilb. Hist. of C. B. 213.

12. In

12. In *Trespass of breaking of his Net*, the Defendant pleaded Not Guilty, and *Evidence is for a Piscary*; Winnington prayed full Costs on 23 Car. 2. cap. 9. S. 149. but the Issue being Not Guilty, and *no Title in the Declaration, nor certified by the Judge* of Assise that Title was in Question, the Court refused to give more Costs then Damages. 3 Keb. 121. Hill. 24 Car. 2. B. R. Pembroke (Earl of) v. Westall.

13. In an Action upon the *Case for Common*, Peachell prayed Restitution of Costs, there being but 1 d. Damage, and being no Certificate on the Trial, that the Title was in Question, sed non allocatur; for per Curiam, it has been resolved, by the major Part of the Justices of England, that the Statute 23 Car. 2. cap. 9. S. 149. extends only to Trespass, and Assault and Battery, and not to Action upon the Case or Assumpsits, or such like; which the Court now agreed, and denied Restitution, the rather here, because the Title must be in Question. 3 Keb. 31. pl. 59 Pasch. 24 Car. 2. B. R. Brown v. Taylor.

14. In special Action upon the Case for *Battery of Servant, Per quod Servitium amisit*; Barwell prayed Costs without the Judges signing the Postea, that the Battery was well proved; and per Curiam it was granted in B. R. on 23 Car. 2. cap. 9. S. 149. 3 Keb. 184. pl. 27. Trin. 25 Car. 2. Peak v.

15. In *Trespass of taking the Plaintiffs Bull*, on Verdict for the Plaintiff 25 s. Damages. Tremain prayed full Costs, whereupon it was referred to the Secondary to confer with the Prothonotaries of C B. and on their Report per Cur. no Costs shall be allowed; and Costs was denied. 3 Keb. 247. pl. 68. Mich. 25 Car. 2. B. R. Claxton v. Laws.

16. An *Action* brought *in an inferior Court for an Assault and Battery*, was *removed into B. R.* and upon the Trial the *Jury gave 6 s. 8 d. Damages, and 40 s. Costs*, and the Judge before whom it was tried *certified, that the Assault was sufficiently proved.* The Question was, whether or no in this Case the Plaintiff should recover any more Costs than Damages? And 3 Points were moved. 1st. Whether or no the Judge had sufficiently certified, because it was that the Assault (and *not the Assault and Battery)* was sufficiently proved. 2dly, Whether or no, if the Costs and Damages given by the Jury, exceed 40 s. it shall be within the Act? 3dly, Whether an Action commenced in an inferior Court originally, and afterwards removed hither, shall be within the Act? And as to this Point the Reporter says he was told, that the Judges of C. B. had adjudged, that it was, as to this, all one as if an Action began here. 4thly, The Reporter says he was told, that the Judges at Serjeant's Inn had differed in their Opinions, whether or no Actions of the Case were within the Act; but the Opinions of most were, that they were not, nor none but those named, viz. Trespass and Battery. Freem. Rep. 365, 366. pl. 467. Pasch. 1674. Hamond v. Rockwood.

17. An Action of Trespass was brought Quod *Domum fregit, and Bona asportavit*, and *as to the Domum fregit the Defendant was found Not Guilty, but to the taking away the Goods Guilty, and Damages assessed to 15 s.* The Question was, whether he should have any more than Damages, in as much as being found Not Guilty as to the Domum fregit, it is now no more than if he had brought an Action of Trover for the Goods, and that had not been within the Statute; and a Precedent was cited in C. B. where it was held, that the Plaintiff should have his full Costs; sed advisare vult Cur. and so it was held here afterwards. Freem. Rep. 394. pl. 511. Trin. 1675. B. R. Anon.

2 Lev. 102. Smith v. Neesam, seems to be S. C. re-

18. In an *Assault and Battery* the Case upon the Evidence was this, the *Defendant drew a Sword, and waived it in a menacing Manner against the Plaintiff, but did not touch him*, so the Jury were ordered to find him Guilty as to the Assault, but not of the Battery; and the Opinion

Opinion of the Court was, that the Plaintiff was to have no more Costs than Damages, for the new Act excepts Actions of Assault and Battery, so that both must be proved. Vent. 256. Pasch. 26 Car. 2. B. R. Anon.

solved accordingly, as the Reporter says that he heard. ——

3 Keb. 335. pl. 38 Smith v Hadome, S. C. the Court conceived, that he can have no more Costs than Damages, and that the Statute does not extend to the increased Costs; but the Court may give Judgment for what Damages the Jury tax, though only the Assault be certified.

19. North Ch. J. said, this Statute was made with respect to the Statute of 43 Eliz. cap. 6. for there it is provided in Personal Actions, if the Debt or Damage is under 40 s. &c. the Judges may mark the Postea, and the Plaintiff shall recover no more Costs than Damages, but there *Trespass and Battery* are excepted, and then this Statute provides in those Cases only; the *Difference is upon the* 43 *Eliz. the Party shall have his ordinary Costs, unless the Judge certify* [*less*;] *but upon this last Statute in Trespass and Battery, when less than* 40 *s. is given, the Party shall not have ordinary Costs, unless the Judge do certify*; And he said it was held by the Judges, that such Personal Actions, which did not bring the Title of the Land in Question, were not within this Statute, except Battery, and therefore he held the principal Case, being an Action upon the *Case by a Commoner*, could not possibly bring the Title of the Land in Question; and besides, the Statute was made to prevent Suits for petty Trespasses. Freem. Rep. 214. pl. 222. Mich. 1676. in Case of Styleman v. Patrick.

20. *Trespass in the Palace Court*; the *Cause was removed into B. R. by the Defendant*, and the Jury having given 15 s. Damages, the Question was, upon the Statute 22 & 23 Car. 2. cap. 9. whether the Plaintiff should have no more Costs than Damages; Et per Cur. the Cause being removed by the Defendant, the *Plaintiff shall have more Costs*, but not if it had been removed by the Plaintiff, for so he might be more vexatious. 3 Salk. 115. pl. 9.

2 Lev. 124. Hill. 26 & 27 Car. 2. B. R. Gavel v. Scudamore S. C. the Court thought it reasonable that he should have more Costs; the Cause being remov'd by the Defendant; but not adjudg'd; But it being said to have been so ruled in C. B. the Court said they would advise with the Justices of C. B. so that the same Rule might be in both Courts.

21. Case for *eating of his Grass* with Sheep, *so that he could not in tam amplo modo enjoy his Common* &c. this is not within 43 Eliz. for it is not a frivolous Action, because a little Damage to one Commoner, and so to 20, may in the whole make it a great Wrong, and if it was frivolous, the Judge of Assise might mark it to be such, and though a Title is here set forth to his Common, yet the Title of Land cannot come in Question, and so not be certified as in Cases of Trespass, neither is there any need of a Certificate, if it appears by the Pleading that the Title of the Land is in Question. 2 Mod. 141. Mich. 28 Car. 2. C. B. Styleman v. Patrick.

Freem. Rep. 214. pl. 222. S. C. the Jury gave 10 s. Damages, and 40 s. Costs, and North Ch. J. Windham, and Scroggs conceived, that this was not was not within the Statute 22 & 23 Car. 2. but Atkins J. e contra; for though the Title of the Land could not come in Question, yet Common is concerning Land, and a Man may have Freehold in it. North Ch. J. said, that here it appears his Title was in Question, for he must prove his Title in Evidence, as it is alleged in the Declaration, and they all agreed, that where it appears by the Record that a Title is in Question, there is no need of the Certificate of the Judge; But per Atkins, it may be the Defendant would confess his Title upon the Trial, and then it would not be in Question; but according to the Opinion of the other three the Plaintiff had his ordinary Costs.

22. In Trespass for *entring his Close* &c. the Defendant *justified for a Way* &c. the Plaintiff *replied that the Defendant was Guilty extra viam*, upon which they were at Issue, and the Plaintiff had a Verdict; the Question was, whether he should have no more Costs than Damages; adjudged

2 Show. 28. S. C. but not S. P. —— S. C. cited by Lord Ch. B. Gilbert. Gilb Equ. Rep. 198, 199.

adjudged he shall have full Costs, because the *Title to the Way appears on Record*, (viz.) *of what Extent it is, viz. so many Feet in Breadth &c.* 2 Lev. 234. Mich. 30 Car. 2. B. R. Asser v. Finch.

23. In an Action of *Trespass*, upon Not Guilty, at the Assises in Suffolk, a *Verdict* was found *for the Plaintiff, and* 10 *s Damages, and* 40 *s. Costs, and Judgment entred accordingly*; And an Action of *Debt* was brought upon the Judgment, and the *Defendant pleaded specially the Statute* 22 & 23 Car. 2. cap. 9. *against recovering more Costs than Damages (where the Damages are under* 40 *s.) in Trespass, unless certified by the Judge that the Title was chiefly in Question*, the Words of the Statute being, If any more Costs in such Action shall be awarded, the Judgment shall be void. To which the Plaintiff demurred, and the Plea was held insufficient; because the Verdict was for 40 s. Costs, and not Costs increased by an Award of the Court. If the Judgment were erroneous, yet it was hard to make it avoidable by Plea, notwithstanding that the Words of the Statute are, shall be void. 2 Vent. 36. Trin. 33 Car. 2. C. B. Page v. Kirke.

2 Jo. 232. S.C. resolv'd, that the Statute does not extend to this Case, or other like Trespass of Goods.— Skinn. 100. pl. 17. S. C. the Court order'd the Party full Costs; and Saunders Ch. accordingly, likewise out of the Act; and in such Cases, where it appears in the Record, the Postea need not be mark'd.

24. Trespass Vi et Armis for *flinging down* certain *Stalls* of the Plaintiff *in the Market Place of H.* It was resolv'd per tot. Cur. that the Plaintiff should have his ordinary Costs, because the Statute shall be intended to reach to such Action only in which the Freehold may apparently come in Debate, and this Action is not Quare Clausum fregit, but only for destroying a Chattel, and the Freehold cannot come in Debate, any more than if a Man should take his Sword out and run a Coach-Horse thro' the Guts, whereby he died, and the Owner shall bring Trespass Vi et Armis, and recover under 40 s. Damages, yet he shall have his full Costs. Raym. 487, 488. Hill. 34 & 35 Car. 2. B. R. Smith v. Batterton.

——— J. said, that a Stall is no Part of the Freehold. ——— 2 Show. 258. pl. 265. S. C. held accordingly, and if the Stall had been annexed to the Freehold, yet if carried away it would be likewise out of the Act; and in such Cases, where it appears in the Record, the Postea need not be mark'd. ——— S. C. cited 3 Mod. 40. ——— S. C. cited by Ld. Ch. B. Gilbert. Gilb. Equ. Rep. 198.

Gilb. Equ. Rep. 198. S. C. cited by Ld. Ch. B. Gilbert.

25. Trespass for *breaking his Close, and impounding of his Cattle*; Upon Not Guilty pleaded the Plaintiff had a *Verdict*, but *Damages under* 40 *s.* Whereupon Mr. Livesay the Secondary refused to tax full Costs, alleging it to be within the Statute of 22 & 23 Car. 2. Mr. Pollexfen moved for Costs, alleging that this Act doth not extend to all Trespasses, but only to such where the Freehold of the Land is in Question; If the Action had been for a Trespass in breaking his Close, and Damages given under 40 s. there might not have been full Costs, but here is another Count for impounding the Cattle of which the Defendant is found Guilty, and therefore must have his Costs; the Plaintiff had ordinary Costs. 3 Mod. 39, 40. Hill. 35 Car. 2. B. R. Barnes v. Edgard.

S. C. cited per Cur. Comyns's Rep. 19. Mich. 8 W. 3. B. R. in Case of Lately v. Fry, which was Trespass Quare Clausum fregit, & Blada sua ibidem crescent, succidit & asportavit. The Jury, as to the breaking of the Close, and cutting of the Corn in the Blade, found the Defendant Guilty, but as to the carrying away Not Guilty; but where it does not appear that the Trespass was *committed under pretence of Title*, or that any thing was carried away, there we cannot make a Construction contrary to the express the Words of the Act of Parliament.

26. In an Action of *Trespass Quare Clausum fregit, and putting Stakes upon his Ground*, it was held, that this was within the late Statute, which enacts, that the Plaintiff shall recover no more Costs than Damages; but if *any Thing had been taken away (of how little Value soever)* it had not been within the Statute. 2 Vent. 48. Trin. 1 W. & M. in C. B. Anon.

27. Tres-

27. Treſpaſs *Quare Clauſum fregit, and declared of divers others Treſpaſſes.* The Defendant pleaded Not Guilty as to the Clauſum fregit, and juſtified as to the other Treſpaſſes, which upon the Iſſue was found for the Defendant, and as to the *Clauſum fregit it was found for the Plaintiff.* The Court held it a clear Caſe within the late Statute, that the Plaintiff ſhould have no more Coſts than Damages, the Damages being under 40 s. 2 Vent. 180. Trin. 2 W. & M. in C. B. Anon.

28. In an Action of Treſpaſs, Quare *Clauſum fregit*, and digging up *and carrying away of his Trees.* It appears upon the *Evidence, that* the Defendant had entred into the Plaintiff's Cloſe, and *digged up ſeveral Roots of his Trees, and remov'd them to a Place on the ſame Ground, about two Yards diſtance off.* Pollexfen, Ch. J. and Rokeby (Powell abſent,) were of Opinion, that the Plaintiff was to have full Coſts, becauſe the Roots were carried from the Place where they were digged, tho' not remov'd off from the Ground; Ventris conceiv'd that the taking of the Roots, and laying them a little way off in the ſame Man's Ground, could not be taken as an Aſportavit, but by the Opinion of the other two the Plaintiff had his full Coſts. 2 Vent. 215, 216. Mich. 2 W. & M. in C. B. Anon.

Gilb. Equ. Rep. 198. Hill. 12 Geo. 1. S. C. cited by Ld. Ch. B. Gilbert, and ſaid, that Denton J. inform'd him, that Trin. 11 Geo. 1. the Court of C. B. doubted of this Caſe in Vent. 215. But they agreed, that if any thing was carried off from the Grounds, tho' of never ſo little Value, it would be an Aſportavit; For the Words Abcariavit, & Aſportavit, in Declarations, means ſuch a Carrying as amounts to a Converſion to the Defendant's Uſe.

29. In an Action of Treſpaſs *Quare Clauſum fregit*, where *as to ſome Part there was Not Guilty pleaded*, and *as to the other a ſpecial Juſtification*, and a *Verdict upon the general Iſſue for the Plaintiff*, and the *ſpecial Iſſue for the Defendant.* The Court took this to be within the late Statute for the Plaintiff to have no more Coſts than Damages, becauſe the Iſſue upon the Matter ſpecially pleaded, was found for the Defendant, and ſo the ſame Thing if the general Iſſue had been only pleaded, and found for the Plaintiff. 2 Vent. 195. Trin. 2 W. & M. in C. B. Anon.

30. *Debt for a Penalty of 20 l. brought by the Corporation qui tam* &c. *upon a private Act of Parliament concerning the New River Water brought to Plymouth*; the Action was brought againſt Collings for diverting the Water-courſe contrary to the Statute. Upon Nil Debet pleaded, the Plaintiffs had a Verdict at the Aſſiſes and the Queſtion now was, whether they ſhould have Coſts upon a Recovery on this new and penal Statute? and after Deliberation it was held per tot. Cur. the Plaintiffs ſhall have Coſts, becauſe *here was a certain Penalty given to certain Perſons*, and ſo within the Rule for Coſts; but it is otherwiſe where the Penalty is incertain, or where it is given to common Informer; and ſo it was ajudged upon a Recovery on a private Act of Parliament, between the **Corporation of Cutlers v. Ruſſin,** that the Plaintiffs ſhould have Coſts, becauſe the Penalty was given to a certain Perſon; but it is otherwiſe where given to an Informer. Carth. 230, 231. Paſch. 4 W. & M. in B. R. Plymouth (Corporation of) v. Collings.

S. C. cited per Cur. as ruled accordingly. Skinn. 368. in pl. 14. Mich. 5 W. & M. in B. R.

31. Treſpaſs &c. *Herbam depaſcendo & Solum & fundum Carucis ſubvertendo & in ſolo ſodendo & cum Terra inde projecta Aquæ curſum ſuum obſtupand' per quod Clauſum ſuum inundat' fuit* &c. Upon Not Guilty pleaded the Plaintiff had a Verdict, and 2d. Damages; and the Secondary refuſing to tax any Coſts more than the Damages, it was moved now, that the Plaintiff might have full Coſts, as in other Caſes, and per Cur. upon Veiw of the Statute, the Plaintiff ſhall not have full Coſts in this Caſe, for that it was within the very Words of the reſtraining Clauſe, which allows no more Coſts than Damages, if the Damages are under 40 s. Quod Nota. Carth. 224, 225. Paſch. 4 W. & M. in B. R. Laver v. Hobbs.

32. Treſ-

32. Treſpaſs *for chaſing his Sheep, and that he* (the Defendant) *Al Loca ignota eos abduxit & elongavit*; after a Verdict for the Plaintiff, and 2d. Damages, he had his full Coſts upon a Motion, principally upon the Word *Abduxit* which is the ſame in Signification with Aſportavit. Carth. 225. cites Hill. 5 W. 3. Colethurſt v. Hayes.

33. In an Action of *Treſpaſs ſeveral Treſpaſſes* were ſet forth and the Defendant was *found Not Guilty as to all but one* which was *pedibus ambulando*, and the Damages 5 s. and no more. This Cauſe began originally in an Inferior Court, and was removed hither; and the Court allowed full Coſts, tho' the Damages were ſo ſmall; Quod Nota. 4 Mod. 378. Hill. 6 W. & M. in B. R. Roop v. Scritch.

Comb. 399. Blachley v. Fry, S. C. adjornatur. —— 1 Salk. 193. pl. 1. S. C. adjornatur. But Holt Ch. J ſaid, that where the Treſpaſs is done *Clamando Titulum, or the Title may come in Queſtion*, there ſhall be full Coſts —— 5 Mod 315. Blanchly v. Fry S. C. adjornatur.

34. *Treſpaſs for entring his Cloſe, and cutting* and carrying away *his Corn*; Upon Not Guilty pleaded, the Defendant is found Guilty of all the Treſpaſs, but carrying away the Corn, and as to this he is found Not Guilty; and it was moved to have full Coſts, becauſe otherwiſe a Man might come and deſtroy Fruit-Trees and Flowers in a Garden, and do Damage to a great Value; yet upon Treſpaſs brought, the Defendant could not inſiſt upon any Right, but plead Not Guilty, and the Plaintiff ſhall have Coſts only according to the Damage and the Act did not intend ſuch *wilful Treſpaſſes, but only Caſual* Treſpaſſes; as the riding over a Cloſe in Hunting &c. and ſeveral Caſes were cited, wherein ſuch deſigned and voluntary Treſpaſſes, tho' Nothing be carried away, yet full Coſts were given; but notwithſtanding all this that was ſaid, the Court ſeem'd ſtrongly to incline e contra; & adviſare vult; but the Court agreed, that *if he had carried away, tho' not out of the Premiſſes*, full Coſts ſhould have been given. Skin. 666. pl. 4. Mich. 8 W. 3. B. R. Blichley v. Fly.

2 Salk. 665. S. C. but S. P. does not appear.

35. Treſpaſs for a *Cloſe broken* &c. Upon Not Guilty pleaded, the Niſi Prius Roll was carried to the Aſſiſes to be tried, and there, by Conſent of the Parties, the Jury had the View, and the Trial was put off to the next Aſſiſes, and then the Iſſue was tried, and a Verdict for the Plaintiff, and 10 s. Damages; And the Queſtion was in C. B. whether the Plaintiff ſhould have more Coſts than Damages, for the Judge had made no Certificate that the Title came in Queſtion; and reſolved per Cur. the Plaintiff ſhall have full Coſts; for it *appears upon the Record, that the View was granted*, but the View cannot be granted unleſs where the Title comes in Queſtion, and therefore the granting of the View *amounts to a Certificate, that the Title came in Queſtion*; and by all the Prothonotaries, it is always the Practice to give full Coſts where the View is granted. Ld. Raym. Rep. 76, 77. Paſch. 8 W. 3. Kempſter v. Deacon.

36. Tho' the *Damages are under* 40 *s. in an Action removed out of an inferior Court by Habeas Corpus, yet the Plaintiff ſhall have full Coſts*, and it is not within 22 & 23 Car. 2. cap. 9. Ld. Raym. Rep. 395. Mich. 10 W. 3. B. R. Canterbury Arch Biſhop v. Fuller.

37. In an Action of Treſpaſs Quare *Clauſum fregit* of *Aſſault, Battery, Wounding, and of Diſturbance of him in his quiet Poſſeſſion* &c. upon Not Guilty pleaded, a *general Verdict* was given *for the Plaintiff, and Damages under* 40 *s.* and Mr. Branthwaite moved to have full Coſts, becauſe the Defendant was found Guilty of Wounding, and Diſturbance of the quiet Poſſeſſion; But per Holt Ch. J. the Practice has been always otherwiſe; and he ſaid, he did not remember ſuch a Motion to have been made; but Gould J. ſaid, that he moved ſuch a Motion as to the peaceable Poſſeſſion here in B. R. but it was denied him; and the Motion here was denied. Ld. Raym. Rep. 566. Paſch. 12 W. 3. Boiture v. Woolrick.

38. It

38. Treſpaſs for *chaſing, driving, and wounding his Sheep, per quod ſome died, and others were dampnified, and alſo for taking and carrying away one Hog* of the Plaintiff; Upon Not Guilty the Jury *found the Defendant Guilty of all but the taking and carrying away the Hog*, of which they found him not Guilty, and gave 2 d. Damages; and the the Queſtion was, whether the Plaintiff could have more Coſts than Damages? And the Court, upon opening the Matter, held the Plaintiff ſhould have his full Coſts, for this is out of the Statute 22 & 23 Car. 2. cap. 9. 1 Salk. 208. pl. 7. Paſch. 2 Ann. B. R. Ven v. Phillips.

39. Though the firſt Words are general, yet by the laſt Word (*Actions*) it is reſtrained to ſuch wherein there be no certifying of the Battery, or the like; therefore if it be an Action wherein there can be no ſuch certifying, as *Debt, Aſſumpſit, Trover, Traverſe for taking his Goods*, Treſpaſs for *beating his Servant per quod* Servitium amiſit, it is out of the Statute. 1 Salk. 208. pl. 7. Paſch. 2 Ann. B. R. Ven v. Phillips.

40. Treſpaſs for *breaking his Cloſe and treading down his graſs. Plaintiff had a Cloſe adjoining to the back of the Defendant's Houſe, which was a Publick Houſe*; The *Defendant uſed to ſet up a Stable for his Gueſts in this Cloſe, and ſerve them there, and often uſed to walk there for his Pleaſure, and with others who ſhot with Bows and Arrows there.* Holt Ch. J. ſaid, that if the Jury give under 40 s. Damages tho' the Title of the Land does not come in queſtion he would certify, for *this a voluntary malitious Treſpaſs*, and the Statute is only to be underſtood of ſmall accidental Treſpaſſes. 6 Mod. 153. Paſch. 3 Ann. B. R. Dove v. Smith.

41. It was moved to have full Coſts in an Action of *Treſpaſs*, inter alia, for *breaking his Lock upon his Gate*, and cited 2 Vent. 215. and 3 Mod. 39. Per Cur. had it been for *taking away the Lock*, full Coſts might have been given. But Powell J. ſaid this ſeems to be laid as a Treſpaſs *in order to try the Title*, and where the *Freehold comes in Queſtion*, there it is held full Coſts ſhall be; but where the Freehold does not come in Queſtion, there no more Coſts than Damages; but if the *Judge certifies* the Treſpaſs to be *voluntary and malicious*, there the Coſts are to be full by Statute 22, 23. Car. 2. cap. 9. But it was adjourned to ſee if the Judge, who tried, would certify. 11 Mod. 198. Mich. 7 Ann. B. R. Butler v. Cozens.

It was held within the Statute; for the Locks were fix'd to the Poſts, and the Poſts to the Freehold. MS. S. C. cites Hill. 12 Ann. Lane v. Brown.

42. *Treſpaſs for chaſing his Cow, and his domeſtick Fowls*, viz. *Hens, Geeſe &c. with Dogs, which Dogs were uſed to bite tame Fowl, by whoſe biting they were killed.* On Not Guilty Verdict for the Plaintiff, and he had his *full Coſts*, becauſe this is not a Treſpaſs wherein the Right of Freehold may come in Queſtion. Gilb. Equ. Rep. 197. cited by Lord Ch. B. Gilbert as Mich. 9 Geo. 1. C. B. Keen v. Whiſtler.

43. *Treſpaſs of Aſſault, Battery, Wounding and Impriſonment, as alſo for entring and breaking* his *Houſe, and opening the Doors of the ſaid Houſe, and breaking three Locks, and three Bars, belonging to the ſaid Doors.* The *Defendant pleaded Not Guilty to all except the Impriſonment, and for that he juſtifies; and* on the Trial the Juſtification was *found for the Defendant, and the Not Guilty for the Plaintiff, and the Damages 2 s 6 d.* and held by the Court, that the Damages being under 40 s. he could not have full Coſts for the Battery, becauſe the Judge had not certified the Battery to be well proved, neither could he have full Coſts for breaking the Houſe &c. becauſe this is a Treſpaſs relating to the Freehold, the Conſtruction of 22 *and* 23 *Car.* 2. *cap.* 9. *S.* 149. having been, that it *extends to Treſpaſs relating to the Freehold and Inheritance, and to ſuch Treſpaſſes only*, which is collected from the Exception, where the Judge certifies that the Title came in Queſtion, which ſhews that the Act *extends only* to *ſuch Treſpaſſes where the Freehold might come in Queſtion, and not to Treſpaſſes of Chattles*; cited by Lord Ch. B. Gilbert. Gilb. Equ. Rep. 197.. as Mich. 10 Geo. 1. C. B. Beck v. Nicholls.

44. Trespass was brought for *breaking and entring Plaintiff's House, and keeping the Plaintiff out of Possession* and Use of the said House, with a *Continuando for a Month, whereby the Plaintiff was put to great Expences to gain the Possession* of his House, *and in the mean Time lost the Profit and Use of his House*; Verdict for the Plaintiff, and 2 s. 6 d. Damages, and upon Motion for full Costs, it was decreed by the Court; for this is a plain Trespass Quare Clausum fregit, and the per quod is only an Aggravation; and in this Case the Title of the Freehold might have come in Question, and if so, there should have been a Certificate of the Judge, which not being in this Case, the Plaintiff can have no more Costs than Damages. Gilb. Equ. Rep. 197, 198. cited by Lord Ch. B. Gilbert as Mich. 12 Geo. 1. C. B. Blunt v. Miller.

45. In Trespass the Plaintiff declares of *breaking and entring his Close*, and then counts, that B. (the Defendant) infra Tempus prædict' viz. Such a Day, broke *and lock'd up the House and Barn and took and detain'd such and such Goods of the Plaintiff's for four Weeks in the said House and Barn.* The Jury found for the Plaintiff, and 2 d. Damages. Lord Chief Baron Gilbert, who delivered the Opinion of the Court, said, that tho' he doubted somewhat at first, yet he is now clearly of the Opinion with his Brothers, that there can be no more Costs than Damages. Here is no Count, but where *the Freehold might possibly come in Question*; For this Count is for breaking the Barn, and locking up the Door of the House and Barn, and detaining several of the Plaintiff's Goods, mentioned in the Declaration, in that House and Barn. Now here is no substantive and independant Count quoad the Goods and Chattles, because it is connected with the breaking and locking up of the Barn, and in that Case the Freehold of the Barn might come in Question; and then locking up the Goods in the Barn is but meer Aggravation in that Count. If a Man will put his Goods in my Barn without my Leave, he can't enter and break my Barn in order to come at his own Goods, and therefore upon this Count the Property of the Goods might not be in Question, but meerly the Barn that was thus broken. Gilb. Equ. Rep. 195. to 199. Hill. 12 Geo. in Scacc. Reeves v. Butler.

46. Another, and still a stronger, Reason in my Opinion, is, that it is *laid by way of Detinuit*, and *not* by way *of Asportavit*; For where it is laid by way of Detinuit, he may detain a Distress, & contra Vadios & plegios, and not by way of Asportation and Conversion; And then even on the part of the Count, touching the Goods and Chattles, the Freehold might come in Question, and whether such Distress were lawful; So that taking this as an Aggravation of breaking of the Barn, as indeed it ought to be, the Freehold might come in Question in this Count; Or if it had been *put into an independant Count, in the Detinet only*, and not by way of Asportation and Conversion, such Count would not be good in Trespass, and therefore no Damages could have been recover'd for it and therefore there could be no Costs de Incremento, and consequently there can be no Costs in that Case; This was the Opinion of the whole Court delivered by the Lord Ch. B. Gilbert. Gilb. Equ. Rep. 199. Hill. 12 Geo. in Scacc. Reeves v. Butler.

47. The Construction upon this Statute was, that in all Actions of Battery, and in all Actions where Freehold could come in Question, if the Damages were under 40 s. the Plaintiff must procure a Certificate from the Judge, in order to obtain his Costs; but in all other Personal Actions, the Law stood as it did before the Statute of Eliz. that the Judge must certify the Action as frivolous, to strip the Plaintiff of his Costs; the plain Consequence of which is, that if there be *several Counts in Trespass, and one relates to the Freehold, in which the Title may come in Question, and another relates to Chattles de Bonis Asportat' in which no Title of Land can come in Question, and intire Damages be found under* 40 *s.* the Plaintiff must have Costs, by the Statute of Glocester, because

cauſe the Coſts are not remitted by the Statute of Eliz. without a Certificate from the Judge, and this is not within the Statute *Car.* 2. wherein there is a Neceſſity there ſhould be a Certificate of the Judge, to intitle to Coſts; and therefore when intire Damages are found, there muſt be ſome Damage proportioned to that Count, and if there be any Damage proportioned to the Count relating to the Goods, that the Statute of Glouceſter carries Coſts of Courſe. Gilb. Equ. Rep. 196. Hill. 12 Geo. in the Exchequer, in Caſe of Reeves v. Butler.

48. In *Treſpaſs for* a very great Detriment and *ſpoiling of the Plaintiff's Land*, it was moved to tax full Coſts, though the Damages given were under 40 s. but the Court ſaid, that an Aſportation was out of the Statute of 22 & 23 Car. 2. cap. 9. Sect. the laſt, but that a Spoliation was not; And Page J. ſaid, that the Courts had diſcouraged Suits of this Nature; For upon the Statute 43 *Eliz. cap.* 6. if the Judge certifies the Suit to be vexatious, they will not allow the Party his full Coſts, though the Damages are above 40 s. but he ſaid, if the Party had produced a *Certificate* from the Judge *of the Treſpaſs being wilful and malitious*, they would have granted it; and this is required by 8 & 9 W. 3. cap. 10. Barnard. Rep in B. R. 117. Hill. 2 Geo. 2. Grandey v. Wiltſhire.

49. In Treſpaſs Quare *Clauſum fregit, and alſo for a Treſpaſs committed on a Chattle ſevered*; Per Cur. the Authorities ſeem to run, that a Treſpaſs being laid to be committed on a Chattle ſevered, the Plaintiff is intitled to full Coſts. Gilb. 42, 43. pl. 5. Hill. 2 Geo. 2. B. R. Granville v. Vincent.

50. Where de *Son Aſſault Demeſne* is pleaded, the Plaintiff is intitled to his full Coſts, provided he has a Verdict; per Cur. clearly; but Judge Lee ſaid, that the Rule is not, that the Plaintiff ſhould be intitled to his full Coſts in all theſe Actions of Treſpaſs, where there is ſpecial pleading, and particularly cited the Caſe of **Philpot v. Jones**, Hill. 1 Geo. 1. in *treſpaſs* there *for breaking the Plaintiffs Houſe*, the Defendant *Juſtified as Bailiff under Proceſs*; the Plaintiff *replied, that his Doors were ſhut*; upon which Iſſue was joined; Verdict found for the Plaintiff, and Damages 2 d. Motion was in that Caſe for full Coſts, but the Court refuſed it. 2 Barnard. Rep. in B. R. 277. Mich. 6 Geo. 2. Waſher v. Smith.

51. 4 & 5 *W. & M. cap.* 23. *S.* 10. *If any inferior Tradeſman, Apprentice, or other diſſolute Perſon, neglecting their Trades and Employments, who follow Hunting &c. ſhall preſume to Hunt, Hawk, Fiſh, or Fowl, (unleſs in Company with the Maſter of ſuch Apprentice duly qualified) he ſhall be ſubject to the Penalty therein, and may be ſued for their wilful Treſpaſs in coming on any Perſon's Land, and if found Guilty, Plaintiff ſhall not only recover his Damages but his full Coſts of Suit.*

1 Salk. 212. pl. 2. Mich. 8 W. 3. Bennet v. Talbot, S C. and though the Action of Treſpaſs was laid for breaking and entering his Cloſe, and treading down his Graſs and Corn, and hunting there, the Defendant being an inferior Tradeſman, Contra Pacem &c. and Contra Formam Statuti. The Court held, that Contra Formam Statuti ſhould only be applied to the latter Part, which was really againſt this Statute, and that ſince the Breaking and Hunting could not be ſeparated, the Plaintiff ſhould have his Coſts according to this Statute; and Judgment for the Plaintiff ——Comb. 420. S. C. adjudged for the Plaintiff; For the Concluſion of Contra Formam Statuti ſhall refer only to that which would reaſonably bear it, and though in Grammer it goes to all, yet in Law it goes to the Hunting only.—— Carth. 382 S. C. adjudg'd accordingly. And per Holt Ch. J. it is ſufficient to lay in the Declaration, that the Defendant hunted in the Plaintiffs Cloſe without concluding Contra Formam Statuti; For that ſhould come in Evidence——— 5 Mod. 307. S. C adjudg'd for the Plaintiff. For this was an Offence before the making this Act, which only repeals that Clauſe of the Statute of 23 Car 2. as to Coſts, and therefore though the Declaration concludes Contra Formam Statuti it is well enough.

52. 8 & 9 *W.* 3. *cap.* 10. *S.* 4. *For the preventing of wilfull and malicious Treſpaſſes, be it further enacted, that in all Actions of Treſpaſs to be commenced or proſecuted, from and after the 25th Day of March,* 1697. *in*

in any of his Majesty's Courts of Record at Westminster, wherein at the Trial of the Cause it shall appear, and be certified by the Judge under his Hand upon the back of the Record, that the Trespass upon which any Defendant shall be found Guilty was wilful and malicious, the Plaintiff shall recover not only his Damages, but his full Costs of Suit, any former Law to the contrary notwithstanding.

But Note, that the Action being to be commenced in those Courts, if they are commenced there, and remov'd by Habeas Corpus or Certiorari into the Courts of Westminster, there the Plaintiff shall have full Costs. Gilb. Hist. of C. B. 217

53. 11 & 12 *W.* 3. *cap.* 9. *S.* 1. *Enacts, that the Statute* 22 & 23 *Car.* 2. *cap.* 9. *shall extend to the Principality of Wales and the Counties Palatine.*

This Statute maintains the Statute of Car. 2. as extending only to the Courts of Westminster, but further enacts, that it shall be extended to the Principality of Wales and Counties Palatine. Gilb. Hist. of C B. 213.

(M) How assess'd or tried.

1. WHERE a Man *tenders Damages and Costs, and the rest of the Debt upon Statute Merchant*, and prays *Scire Facias to re-have his Land*, the Misses and Costages shall be try'd by Averment, and not by saying of the Justices. Br. Costs, pl. 5. cites 47 E. 3. 11.

2. If in *Trespass* brought *against two* Defendants *one is found Guilty by himself, and the other Guilty by himself*, and Damages severally assessed, yet the Costs shall be jointly taxed. 10 Rep. 117. a. in Pilsold's Case, and says, that with this agrees 36 H. 6. 13. and 12 Ed. 4. 1.

If there be *two Issues in several Counties in Trover*, and one is tried, and Judgment and Execution of the Costs and Damages; and afterwards the other Issue is tried, and Costs thereupon; the last is Erronious, as to the Costs. Brownl. 3. Brocas's Case.

3. Sir J. S. brought an Action upon the Case against P. B. upon a *Trover* of Goods and Houshold-Stuff; the Defendant pleaded as to Parcel, that they were fixed to his Freehold in S. in Hampshire, absque hoc that he found them in other Manner; as to another Part, that the Plaintiff gave them to him at D. in Hampshire; and as to the other Part, he pleaded Not Guilty; For the first Part the Plaintiff caused it to be entred, Non vult ulterius prosequi, and took Issue upon the two other, and it was *found for the Plaintiff by several Juries, in several Counties, and Damages and Costs assessed by the Juries*; and now the Defendant brought Error, and *assigned Error, because both Juries have assessed Costs, and Judgment given accordingly*, whereas the last Verdict ought to do it; and where two Juries are to try the Issue, the Form of the Entry after the first Verdict is, Cessat Executio, until the other Issue be tried. See 21 H. 6. 51. 36 H. 6. 13. Anderson said, several Issues cannot sever the Costs, although they may the Damages, for it is but one Suit, therefore but one Costs, and that is the Reason that Judgment shall not be given until the last Issue be tried, because that *Costs shall be but once assessed*, which was granted by the whole Court, and by Periam, that *the Jury may assess Costs for the whole Suit*, Quod fuit Concessum. 2 Le. 177. pl. 217. Trin. 38 Eliz. C. B. Sir John Sands v. Brocas.

4. Action of *false Imprisonment* was brought by M. *against two Bailiffs of a Corporation*, who pleaded Not Guilty, and *at the Nisi Prius the Plaintiff was nonsuit*; and now Serjeant Richardson moved upon the Statute of 7 *Jac. cap.* 5. for double Costs, and that upon the very Words of the Statute, and the Question was, *whether the Costs ought to be taxed by this Court, or by the Justices of Assise*; Hobart said, that upon the Nonsuit the Justices of Assise might have commanded the Jury to have taxed the single Costs, and then the same Judges might have doubled them, and that within the Words of the Statute; but if the Judge grants

grants this, then upon his Certificate the double Coſts ſhall be aſſeſſed, for otherwiſe the Party ſhall be without any Remedy, and Brownlow Ch Prothonatary agreed with that, as to the Certificate, that this Court ſhall aſſeſs the Coſts, and Brownlow had a Precedent accordingly. Win. 16. Trin. 19 Jac. Major v. two Bailiffs.

5. After the Statutes made as to Coſts, they began to make it *a Rule* for the better Execution of the Statute, *that the Jury ſhould tax the Damages apart, and the Coſts apart*, that ſo it might appear to the Court that the Coſts were not conſidered in the Damages; and when it was Evident that the Coſts taxed by the Jury were too little to anſwer the Coſts of the Suit, the Plaintiff prayed, that the Officer might tax the Coſts that were inſerted in the Judgment, and therefore ſaid to be done Ex aſſenſu of the Plaintiff, becauſe at his Prayer. Gilb. Hiſt. of C. B. 215.

6. Where a *Statute* (as in Waſte) *gives treble Damages*, the *Jury give ſingle Damages, which are afterwards trebled by the Court*; for it is the Jury's Part as to Matter of Fact to aſcertain the Damages, and it is the Buſineſs of the Court to ſee the Law executed, and conſequently to treble them. Gilb. Hiſt. of C. B. 216.

7. An *Indebitatus Aſſumpſit* had been brought *againſt a Collector of the Land-Tax*; The Defendant had a Verdict, but becauſe it *did not appear upon the Niſi Prius Roll that this Action was brought againſt an Officer*, Motion was made, that this might be entred upon the Roll to intitle the Defendant to treble Coſts; accordingly *the Court ordered an Entry to be made* in this Manner, Super examinatione Materiæ it appears to the Court, that the Action was brought againſt the Defendant as Collector; Ideo conſideratum eſt, that he ſhall have his treble Coſts; Arg. ſays, that ſuch Caſe was cited in Caſe of **the King v. Poland**, and upon citing that Precedent, the Court made the ſame Rule that the like Entry ſhould be made in that Caſe. He obſerved farther, that in the Caſe of one **Walker and Sir Wm. Egerton**, Hill. 7 W. 3. the like Entry was made upon the Roll. Accordingly the Court ordered the ſame to be done in the preſent Caſe. 2 Barnard. Rep. in B. R. 117. Hill. 5 Geo. 2. in Caſe of Catherol v. Cowper.

(N) At what Time Coſts may be given.

1. TReſpaſs *againſt two for chacing in his Park* at D. who *pleaded Not Guilty*, and the *one was found Guilty at ſuch a Day to the Damages of* 30 *s. and the other Guilty at another Day to the Damage of* 13 *s.* The *Plaintiff prayed double Damages, and Impriſonment* for 3 Years, according to the Statute, and could not have it, becauſe he *took his Action at Common Law, and not a Writ making Mention of the Statute*; and it was awarded, that the *Plaintiff ſhould recover* 30 *s. againſt the one, and* that the Plaintiff *ſhould be amerced*, becauſe he is acquitted of the Treſpaſs done with the other, and that he *recover* 13 *s. Damages againſt the other, and* that he *be amerced againſt him, becauſe he is acquitted of the Treſpaſs in common with the other.* Br. Treſpaſs, pl. 58. cites 47 E. 3. 10.——& concordat 9 H. 6. 2. of the Damages in Action upon Statute, and in Action at Common Law. Br. Ibid.

2. In *Debt of* 20 *l.* 10 l. is not deny'd, *and* [*as to the other*] 10 *l. he pleaded in Bar*, Judgment may be of the 10 l. immediately, but no Coſts till the Bar be try'd of the other 10 l. Br. Coſts, pl. 13. cites 22 H. 6. 47, 48.

(O) Coſts increaſed. In what Caſes.

1. IN *Attaint found upon Aſſiſe*, the Plaintiff recovered Coſts, and becauſe they were too little the Court increaſed them; in the written Book, fol. 12. and in the Printed, fol. 23. for it is falſe Printed. Br. Coſts, pl. 8. cites 8 H. 4. 23.

2. In Treſpaſs *againſt three* of breaking his Park and killing his Savages there &c. and the *one appeared, and the others not*; the Plaintiff counted that he chaſed in, and broke his Park, and kill'd his Savages; the *Defendant pleaded Not Guilty*, and the Jury *found that he came into the Park to chaſe and kill* Savages, *(but did not kill any of them) to the Damage of two Marks, viz. 13 s. 4 d. for the Treſpaſs, and 13 s. 4 d. for the Coſts*, and the Plaintiff *prayed his Judgment againſt him* who is found Guilty, *and releaſed his Suit againſt the others*, by which the Court awarded, that the Plaintiff recover againſt the Defendant 40 s. viz. 13 s. 4 d. for the Damages, and 13 s. 4 d. for Coſts by the Jury aſſeſs'd, and 13 s. 4 d. more for *Coſts increaſed by the Court*. Br. Treſpaſs, pl. 106. cites 5 H. 5. 1.

Br. Conſcience, pl. 22. cites S. C.

3. In *Treſpaſs* the Defendant was found Guilty at the Niſi Prius to the *Damage of* 40 *s.* and becauſe the *Defendant had* Superſedeas and *Injunction* that the Plaintiff ſhould not purſue at Common Law till the Matter be diſcuſs'd in Chancery, by which the *Plaintiff expended in the Chancery* 10 *Marks*, and after the *Injunction was diſſolved*, by which the Plaintiff pray'd Increaſe of Coſts in Banco; and it was awarded that the Plaintiff ſhall recover 40 s. in Damages, and 3 l. in Coſts. Br. Coſts, pl. 22. cites 21 E. 4. 78.

4. Error of a Judgment in Coventry was aſſigned, becauſe the *Verdict found 5 l. for Damages, and 26 s. 8 d. for Coſts*, and the *Court awarded he ſhould recover the Damages and Coſts aſſeſſed by the Jury, and* that he ſhould recover 53 *s.* 4 *d. De Incremento* ad requiſitionem of the Plaintiff, and doth *not ſay Pro Miſis ſuis*, and it might be that the Incrementum was Pro Damnis. All the Court, Præter Berkeley, held it well enough; for it ſhall be *intended Pro Miſis*, which was the laſt Antecedent, and that which might lawfully be increaſed and not pro Damnis, which cannot be increaſed. Cro. C. 413. pl. 7. Trin. 11 Car. B. R. Anon.

(P) Payment inforced. How. Or New Actions ſtopp'd.

1. THE Lord Biron was Plaintiff in an Action, and upon a *Non-ſuit 5 l. Coſts were taxed* againſt him, and he *brought another Action* for the ſame Matter, which was ſaid to be meerly Vexation, and that he refuſed to pay the Coſts, neither could he be compelled, being a *Peer, and in Parliament Time*; wherefore the Court gave Day to ſhew Cauſe, why this Action ſhould not ſtay until he had paid the Coſts in the former. Vent. 100. Mich. 22 Car. 2. B. R. Lord Biron's Caſe.

2. The

2. The Court was moved on the Part of the Defendant, that in regard the *Plaintiff* had *obtained the Cauſe* between them *to be tried at the Bar*, and therefore he might be ordered by the Court to give Security to pay the Coſts, in Caſe the Trial ſhould be againſt him; But the Court would make no ſuch Rule, but ſaid, if he will not pay the Coſts in Caſe the Verdict be againſt him, he ſhall take no Benefit here afterwards upon it. Sty. 322. Paſch. 1652. Dudley v. Born.

3. A Motion was made to ſtay the Trial of an *Ejectment* at Bar till the Payment of *Coſts of a former Trial in Ejectment in C B.* (Note, it was *not between the ſame Perſons, for there was another Leſſor.*) Dolben J. the Rule of ſtaying a Trial for Non-payment of Coſts at firſt was in the ſame Court where the former Trial was, but now the Rule is extended to other Courts, and foraſmuch as it appears in this Caſe to be *on the ſame Title*, it is reaſonable to grant the Motion. Holt ſaid, we cannot take Notice that it is on the ſame Title. Dolben, it appears by Affidavit. Holt, admitting it to be the ſame Title, yet here is *another Perſon*, (viz. an Heir or a Deviſee) who is not liable to pay the Coſts of the former Action; And it was agreed, that where the *Leſſor makes a new Leſſee in the ſecond Action*, that ſhall not avoid the Payment of Coſts; Adjornatur. Comb. 106. Paſch. 1 W. & M. in B. R. Tredway v. Harbert.

4. An *Ejectment* was brought in C. B. and a *Verdict for the Plaintiff, but he had no Coſts*; and now the *Defendant in that Action brought a new Ejectment in B. R. againſt the ſame Plaintiff*, and Sir Francis Winnington moved, that he might have his Coſts before he ſhould be compelled to plead to the new Action; but it was not granted, becauſe he *had no Vexation, the Verdict being for him*; but if it had been againſt him, or that he had been nonſuited, he ſhould not have brought another Action before the Coſts of the firſt had been paid, becauſe it was a Vexation to bring a new Action. 4 Mod. 379. Hill. 6 W. & M. in B. R. Roberts v. Cook.

5. The Plaintiff brought *Indebitatus Aſſumpſit for Monies received after the Death of the Teſtator by the Defendant, to the Uſe of the Plaintiff as Executrix* &c. Upon Non Aſſumpſit pleaded, the Plaintiff was *nonſuit*, and now ſhe brought a new Action; and the Defendant moved to have Coſts before the Plaintiff ſhould be permitted to proceed, but denied per Cur. But Note, that in another Action between theſe Parties the Plaintiff paid Coſts for not going on to Trial according to Notice. 2 Ld. Raym. Rep. 865, 866. Paſch. 2 Ann. Elwes v. Mocata.

1 Salk 314. pl. 21. S. C. but S. P. does not appear.——
7 Mod 48. Elvis v. Macato S. C. but not exactly S. P.

6. In *Ejectment* the Defendant had a Verdict, and Judgment, and Coſts taxed, and then the Plaintiff brought a Writ of *Error in the Exchequer Chamber, and pending that Writ, he brought a new Ejectment*; and now it was moved, that he might not proceed on this Ejectment till he had paid the Coſts of the firſt. The Court thought it hard that the Defendant ſhould be doubly vexed by the Proceedings on the Writ of Error, and by a new Ejectment, therefore made a Rule, if the Plaintiff ſhould proceed on the Ejectment he *ſhall pay the Coſts of the firſt, otherwiſe he ſhall not proceed on the ſecond.* 8 Mod. 225, 226. Hill. 10 Geo. Crundell v. Bodily.

7. In an Action for an *Eſcape* brought *by an Executrix againſt the Marſhall*, Mr. Strange moved that Proceedings might be ſtaid till ſhe paid the Coſts of a *Nonſuit* in a former Action upon the ſame Demand, and compared this Caſe to that of a Pauper; But the Court (Ch. J. abſent) ſaid, that this Motion has been often made, but never allowed; accordingly it was refuſed in the preſent Caſe. 2 Barnard. Rep. in B. R. 94. Hill. 5 Geo. 2. 1731. Holſey v. Mullins.

8. The Plaintiff had brought a *former Action as Adminiſtrator*, but in the Declaration had *left Blanks for the Time when the Adminiſtration was committed*

committed, and for some other Particulars relating to it; the Defendant demurred to the Declaration for this Reason, but the Plaintiff instead of moving to amend his Declaration, *got Leave* of the Court, upon a Side-Bar Motion, *to discontinue without Payment of Costs as being an Administrator.* Notwithstanding this, the Plaintiff had since brought another for the same Cause as the former; upon which Mr. Strange moved, that Proceedings in it might be staid till he paid Costs in the former, but the Court refused the Motion, by reason that an *Administrator is a Person indemnified by the Law from all Costs on commencing any Action.* 2 Barnard. Rep. in B. R. 154. Trin. 5 Geo. 2. 1732. Bird v. Smith.

9. It was *moved, that* the *Trial might be put off till the Plaintiff should pay the Costs of a former Notice.* The Court agreed that they grant these Motions *in Ejectment, but* said they do it *in no other Action*, upon which the Motion was refused. It was then said, that it would be but a fruitless Thing to pray an Attachment against the Plaintiff, because he absconded, so that he could not be served with it. Whereupon a Rule was made, that Service at his last Place of abode may be a good Service, and accordingly that Rule was granted. 2 Barnard. Rep. in B. R. 131. Pasch. 5 Geo. 2. 1732. Cock v. Wilkins.

(Q) In Chancery.

See Tit. Chancery (A. a)

Br. Costs, pl. 22 cites S. C.

1. *IN Trespass, after Issue found by Nisi Prius for the Plaintiff*, the *Defendant obtain'd Subpœna and Injunction to stay the Plaintiff's Suit at Common Law*, and after the *Injunction was dissolved*, and the Plaintiff had 3 l. Costs by reason of the Delay in Chancery. Br. Conscience, pl. 22. cites 21 E. 4. 78.

2. He who is vex'd tortiously by Subpœna, shall recover Damages by Award of the Chancellor, and he who sues Subpœna *shall find Surety to render Damages* if he does not prove his Bill true. Br. Conscience, pl. 24. cites Inter statuta tit. Subpœna.

3. *Feme Sole Sues* out a *Subpœna, and the same Day is Married*, is dismissed with Costs. Cary's Rep. 139, 140. 22 Eliz. Peer v. Cawse.

4. *Costs* tax'd for Scandal in a *Bill in Chancery* at 100 l. but tho' the Scandal was very great, yet by Ld. Chancellor and the Judges it was reduc'd to 50 l. and the Counsel, whose Hand was set to it, to pay the Defendant 5 l. Chan. Rep. 194. 12 Car. 2. Emerson v. Dallison.

3 Chan. Rep. 65. S. C. in totidem Verbis.

5. The *Plaintiff exhibited a Bill against the Father of the now Defendant, and revived it against the Defendant as his Son and Heir, which was afterwards dismissed with Costs*; And the Question was, whether the Defendant should have *the Costs expended by his Father* in the Suit, before the Proceedings were revived? And it was ruled he could not, for they *were dead with the Person.* Nelf. Chan. Rep. 147. 22 Car. 2. Lloy'd v. Lord Powys.

6. Decree of *the Commissioners of charitable Uses* for Payment of Costs &c. reversed. Fin. Rep. 81. Hill. 25 Car. 2. Wharton v. Charles & al'.

7. The

7. The Plaintiff and Defendant having joined in *Commission to examine Witnesses*, the *Defendant two Days before the Execution* of the Commission, *causes the Plaintiff to be taken in Execution for the same Cause* depending here; the Court ordered the Defendant to pay *Costs and Damages* to be tax'd, to discharge the Plaintiff out of Execution at his the Defendant's Costs, the Plaintiff giving a new Judgment, *and* also *to be at the Charge of a new Commission*, and order'd an Injunction till Hearing. P. R. C. 287. 2 Chan. Rep. 22. 20 Car. 2. Smith v. Holman.

8. Plaintiff's Daughters by a second Venter brought their *Bill* against the Defendant's Daughters by a first Venter, *to prove their Father's Will, whereby Lands were devised to be Sold to raise Plaintiff's Portions*; and on a Trial at Bar, and *Verdict for the Will*, Defendants ordered to Join in a Sale, but were allowed their Costs both at Law and in Equity. Chan. Prec. 93. Trin. 1699. Crew v. Jolliff.

9. Defendant was ordered to pay to the Plaintiff 100 l. for *putting in a scandalous Answer*, and the Defendant who had *set a Counsellor's Hand to it* was order'd to pay the Plaintiff 20 l. and to stand committed to the Fleet till Payment. 2 Chan. Rep. 386, 387. 1 Jac. 2. Whitlock v. Marriot.

10. *Decree against an Infant and his Trustees that the Costs should be paid out of the Trust-Money*, but *reversed, because the Money was to be laid out in Land wherein the Infant was to be but Tenant for Life.* MS. Tab. May 5th. 1713. Peller als. Pollin v. Husband.

11. Costs shall follow the Event of an Account; But if it be *intricate or doubtfull*, there shall be no Costs. MS. Tab. May 8th, 1716. Pitts v. Page.

12. A *voluntary Devisee* brings a Bill to establish the Will against one who is not Heir at Law. *Defendant by Answer claimed under some ancient Settlement which he could not find, and hoped when he could, he should have the Benefit of it.* It was insisted for the Plaintiff, that the Defendant might try his Title by a certain Time, or in Default, that the Plaintiff might hold and enjoy against the Defendant. Bill dismised with Costs. 2 Vern. 743. pl. 651. Hill. 1716. Chir. v. Philpott.

13. A Decree of *Costs necessarily follows a Decree of Payment of Principal and Interest.* MS. Tab. Dec. 1st, 1718. India Company v. Ekins.

14. Bill to set aside Leases made pursuant to a Power. The Bill was dismis'd because a Matter purely determinable at Law, (viz.) Whether the Power was well executed or not. Per Jekyl M. R. If a *Bill is brought for a Matter properly determinable at Law*, the *Defendant ought to demur*, and not suffer the Cause to go on to a Hearing, *and if the Bill be dismised upon Hearing, the Defendant shall not have Costs*, because it was his Fault to let it proceed; and where the Title is purely Matter of Law, tho' the legal Estate is vested in Trustees, the Cesty que Trust ought first to apply to the Trustees to make use of their Names in an Action at Law before he brings a Bill in Equity; for a Bill in Equity in such a Case is only necessary where the Trustees refuse their Names to be made Use of in an Action at Law to determine the Right. MS. Rep. Pasch. 4 Geo. in Chanc. Tichburn v. Leigh.

15. Mentioned to be a Rule that there shall be no Costs allowed a *Party who could never come to his Right without the Aid of a Court of Equity.* MS. Tab. Feb. 15th, 1721. Walker v. Mackpherston.

16. This Bill being with Liberty to Defendants to try their Title at Law, in an *Ejectment* upon the several Forfeitures insisted on by their Answer, there being an Injunction granted in the Cause upon the Plaintiff, Peachy's giving Judgment in Ejectment was necessary to re-

tain the Bill, and continue the Injunction till the Right was tried at Law, to prevent Execution being taken out upon the Judgment in Ejectment given by Order of the Court.

This Day the Cause was set down upon the Equity reserved after a Trial at Bar in B. R. and *Verdict for the Plaintiff as to a Meadow of 9 Acres, that it was forfeited* to the Duke, Lord of the Manor, by making a Lease thereof without Licence, *and as to the Residue of the Lands* in the Ejectment, the Jury find *for Defendant, viz. that they were not forfeited.*

Quære if the Plaintiff, Sir Henry Peachy, shall pay any, and what Costs in this Case, since the Jury have found 4 *Parts in* 5 for him in the Ejectment?

It was admitted, that at Law, if the Plaintiff recover any Part he shall have Costs; but it was said, that it was otherwise in Equity, where the Plaintiff prevails for some Things in Demand, he shall have Costs so far as he prevails, but as to the Residue he shall pay Costs pro Rata; that this Ejectment being tried by Order of this Court, it should be subject as to Costs to the Rules of this Court, and now it is found by Verdict that the Duke did insist upon Forfeiture of several Parcels of Land, contrary to Law and Conscience, and therefore ought not to have Costs for what he unjustly demanded, and put the other Party to an Expence to defend.

Per Macclesfield C. I think in this Case the Defendant, the Duke, ought to have his Costs both in Law and Equity; by the Rules of Law, if the Plaintiff in Ejectment recover any Part he shall have Costs, and this is purely a Title at Law, and Equity has nothing to do with it; it is true, in this Case the Bill was proper so far as to have a Discovery of the several Forfeitures insisted on by the Duke, to enable him to make his Defence at Law, but Sir H. P. is not intitled to any Relief in Equity against the Forfeiture, and therefore the Bill should have been absolutely dismiss'd at the Hearing, and was retain'd only till after the Trial in Ejectment to prevent the Duke of Somerset taking out Execution npon the Judgment given by Order of the Court upon granting an Injunction till the Hearing. Now, since the Defendant, the Duke of Somerset, has prevail'd both at Law and in Equity, he ought to have Costs in both Courts, and the Bill must now be absolutely dismiss'd, save only that the Plaintiff must have an Injunction to stay Execurion upon the Judgment in Ejectment given by Order of the Court, with Liberty to the Duke to enter up his Judgment upon the Verdict, and to bring a new Ejectment upon the other Forfeitures which was found against him, if he thinks fit. Costs to be tax'd by the Master, both at Law and Equity. MS. Rep. Trin. 8 Geo. in Canc. Peachy v. Duke and Dutchess of Somerset.

17. A *Decree Nisi by Default* was afterwards *made absolute by Default also.* Upon a Petition of Re-hearing, the Court refused to re-hear the Cause, because the Costs upon the first Decree Nisi were not paid, for the *Party cannot shew Cause against a Decree Nisi by Default, unless he pays the Costs of the Hearing Nisi,* and he shall not be in a better Condition by suffering that Decree to be made absolute by Default, than if he had appeared at the Day, and shew'd Cause against it; Per Macclesfield C. MS. Rep. Mich. 9 Geo. in Canc. Hoyle v. Hoyle.

18. A *Bill* was brought *by a Devisee* of Land *to perpetuate the Testimony of a Will*; the Master of the Rolls dismissed the Bill with Costs, declaring, that it being *only* for perpetuating the Testimony, it ought not to have been set down for Hearing. 2 Wms's Rep. 162. Trin. 1723. Hall v. Hoddesdon.

19. Equity will not give Costs at Law *contrary to a Verdict.* MS. Tab. February 17th. 1726. Macguire v. Maddin.

20. Costs

20. Coſts always to be allowed *where the Facts conteſted are preſumed to be in the Knowledge of the Party that conteſts them.* MS. Tab. April 4th, 1726. Cockraine v. Blantire.

21. A *Sum in Groſs* ſhall *never be added to a Bill of Coſts* after it is *taxed by a proper Officer.* MS. Tab. April 28th, 1726. Parker v. Stanley.

22. Defendant *not confeſſing Plaintiff's Title*, but putting him to the Expence and Trouble of proving it is a Circumſtance to give Coſts. MS. Tab. February 3d. 1726. Trinity Houſe v. Ryal.

23. *Plaintiff always pays Coſts*, where an Account turns againſt him or *where he prevails in nothing but what he might have inſiſted on at Law.* MS. Tab. February 29th. 1727. Lyre v. Parnel.

24. The *Order for making an Election recites only, that the Plaintiff proſecutes the Defendant at Law and in Equity for one and the ſame Matter*, ſo that the Defendant is doubly vexed; wherefore it *provides that the Plaintiff* his Clerk in Court and Attorney at Law, having Notice of the Order, do *within* 8 *Days after* ſuch *Notice, make his Election* in which Court he will proceed; and if he elects to proceed in this Court (the Chancery,) then the Proceedings at Law are by that Order to be ſtayed by Injunction. But if the Plaintiff ſhall elect to proceed at Law, or in default of ſuch Election by the Time aforeſaid, his Bill is to be diſmiſſed with Coſts. 3 Wms's. Rep. 90. Mich. 1730. Anon.

25. One ought not to be condemned to pay Coſts in this Court for *inſiſting on a Right which the Law gives him* Per Lord Chancellor King. 3 Wms's. Rep. 205. Mich. 1733. Brown and Ux. v. Elton.

26. A *Truſtee misbehaving himſelf* was ordered to pay Coſts out of his own Pocket, and not out of the Truſt Eſtate. 3 Wms's. Rep. 347. Mich. 1734. Loyd & al'. v. Spillet & al'.

27. An *Heir at Law* is made a *Defendant* and *inſiſts on his Title*; he ſhall have his Coſts, tho' it goes againſt him; *But if* an Heir at Law be *Plaintiff and miſcarries* in his Suit, he ſhall not have Coſts; but on his Suit appearing to be groundleſs, ſhall pay Coſts. 3 Wms's Rep. 373. Trin. 1735. Luxton v. Stephens.

For more of Coſts in general, See **Chancery. Damages. Nonſuit.** And other proper Titles.

(A) Cottages.

1. 31. *Eliz. cap.* 7. *Par.* 1. *FOR the avoiding of the great Inconveniences which are found by Experience to grow by erecting and building of great Numbers and Multitude of Cottages, which are daily more and more encreaſed in many Parts of this Realm; Be it enacted that after the end of this Seſſions of Parliament, no Perſon ſhall within this Realm of England make, build or erect, or cauſe to be made, builded or erected, any manner of Cottage for Habitation or Dwelling, unleſs the ſame Perſon do aſſign and lay to the ſaid Cottage or Building* 4 *Acres of Ground at the leaſt, to be accounted according to the Statute or Ordinance De terris Menſurandis, being his or her own Freehold and Inheritance, lying near to the ſaid Cottages, to be continually occupied and manured therewith ſo long as the ſaid Cottage ſhall be inhabited, upon Pain that every ſuch Offender ſhall forfeit to our Sovereign Lady the Queens Majeſty, her Heirs and Succeſſors* 10 *l. of lawful Money of England, for every ſuch Offence.*

This *extends* as well *to Perſons Politick and Incorporate*, as to natural Perſons whatſoever. 2 Inſt. 736.

This Branch prohibits for Things;

1ſt, The new erecting or Building of any Cottage after the end of this Parliament.

2dly, It prohibits the Converſion or ordainingof any Houſing or Building, made or hereafter to be made, to be uſed as a Cottage.

3dly,

3dly, Albeit the Houſe or Building were made before this Act, yet if the Converſion were after the 29th of March 1589. it is prohibited by this Statute, for in Point of Converſion the Words be (made or hereafter to be made.)

4thly, Theſe Things are prohibited in this Breach, upon Pain of Forfeiture of 10 l. to the King or every ſuch Offence. 2 Inſt. 736.

This Branch inflicts Puniſhment upon ſuch as ſhall willingly uphold, maintain, and continue any ſuch Cottage,

2. *Par.* 2. *And be it further enacted by the Authority aforeſaid, that every Perſon that after the end of this Seſſion of Parliament, ſhall willingly, uphold, maintain, and continue any ſuch Cottage hereafter to be erected, converted, or ordained for Habitation or Dwelling, whereunto* 4 *Acres of Ground as aforeſaid, ſhall not be aſſigned and laid to be uſed and occupied with the ſame, ſhall forfeit to our ſaid Sovereign Lady the Queens Majeſty, her Heirs and Succeſſors* 40 *s. for every Month, that any ſuch Cottage ſhall be by him or them upholden, maintained and continued.*

after the end of this Parliament, either erected or converted or ordained as aforeſaid for Habitation &c. upon the Penalty of 40 s. to the King for every Month, that any ſuch Cottage ſhall be maintained.

So as a Cottage is twofold either newly erected or builded after our Statute, or of a Houſe built before or after the Statute, and converted after the Statute to a Cottage. 2 Inſt. 737.

But out of theſe two Branches are *five Exceptons*. By the firſt Branch of this Act any Perſon may erect a new Cottage or convert an old or a new Houſe to a Cottage, if he lay to it 4 Acres of Ground at the leaſt, which muſt have theſe four Incidents; 1ſt, *Theſe Acres muſt be accounted according to the Statute* or Ordinance, De Admenſuratione terræ Anno 35 E. 1. which is after the Rate of 16 Feet and a half to the Pole. 2dly, Theſe 4 Acres *muſt be his or her Freehold and Inheritance* (for neither Grounds holden by * Copy, or for Life, or Lives, or for any Number of Years will ſerve) and it muſt be Freehold, either *in Fee Simple or Fee Tail.* 3dly, They *muſt lie near the ſaid Cottage.* 4thly, They muſt be *continually occupied, therewith* ſo long as the Cottage ſhall be inhabited. 2 Inſt. 737.——* Bulſt 51, 52. Mich. 8. Jac. S. P. held accordingly in the Caſe of Brocke v. Bear.

This Act ſhall *not extend to any Cottage*, which ſhall be ordained (that is converted) or erected to or for Habitation or Dwelling in any City, Town Corporate, ancient Borough, or Market Town.

Nor to any Cottages or Buildings erected or converted *for the neceſſary Habitation of any Labourers in any Mineral Works*, Coal-Mines, Quarries, or Delfs of Stone, or Slate, or about making of Brick, Tile, Lime or Coals, *ſo as the ſame* Cottages or Buildings, *be not above one Mile diſtant* from the Mineral or other Works.

Nor to any Cottage to be made within 3 Places, viz. *Within a Mile of the Sea.* 2dly, *Upon the Side of ſuch Part of the Navigable River where the Admiral ought to have Juriſdiction, ſo long as a Sailor ſhall dwell there, or ſome Perſon of Manual Occupation, for the making, furniſhing, or victualling of any Ship &c.* 3dly, *In any Foreſt, Chaſe, Warren or Park, ſo long as the under Keeper or Warrener dwell therein &c.*

4thly, *Nor* to any Cottage heretofore made. 1ſt, *For a common Herdſman.* 2dly, For a common *Shepherd* &c. (of whom his Cottage is called a Sheepcote) ſo long as a common Herdman or Shepherd ſhall therein Dwell. 3dly, *For a poor, lame, ſick, or impotent Perſon.* 2 Inſt. 727.

Note, *this Exception extends only to Cottages erected* or made *before this Act*, by reaſon of theſe Words (heretofore made) but none of theſe 3 can be erected after this Statute for any of theſe 3 Purpoſes, unleſs there be laid to it 4 Acres of Ground with the 4 Incidents aboveſaid; Lambert Juſtice of Peace pag. 479. miſtakes this Part, and for (Heretofore) ſays (Hereafter.) But by the *Statute* 43 *Eliz. cap.* 2. either the *Churchwardens and Overſeers* or the greateſt Part of them, *by the Leave of the Lord of the Waſte* &c. *in Writing under the Hand and Seal of the Lord, or by Order of the Juſtices of Peace at their general Quarter Seſſions, by the Leave of the Lord as is aforeſaid, may erect* convenient Houſes of Habitation for poor impotent People, and alſo to place Inmates, or more Families than one in one Cottage or Houſe. 1ſt, Note that *extends only to ſuch as be poor and impotent.* It extends *not to any common Herdman or Shepherd*, as hath been likewiſe miſtaken. 2 Inſt. 737.

Nor doth our Act extend *to any Cottage to be made and decreed upon Complaint made to Juſtices of Aſſiſe, or Juſtices of the Peace, in open Aſſiſes or Quarter Seſſions* of the Peace, *to continue for Habitation during the Time only of ſuch Decree.* This laſt Branch extends only to Cottages made after our Statute. 2 Inſt. 738.

Here ſeven Things are to be obſerved.

1ſt That no Inmate or Underſitter can be within this Statute, but

3. *Par.* 3. *Provided alſo, and be it enacted, that from and after the Feaſt of All Saints next coming, there ſhall not be any Inmate or more Families or Houſehold than one, dwelling or inhabiting in any one Cottage made or to be made or erected, upon Pain that every Owner and Occupier of any ſuch Cottage, placing or willingly ſuffering any ſuch Inmate or other Family than one, ſhall forfeit and loſe to the Lord of the Leet, within which ſuch Cottage ſhall be, the Sum of* 10 *s. of lawful Money of England, for every Month that any ſuch Inmate or other Family than one, ſhall dwell or inhabit*

inhabit in any one Cottage as aforeſaid. And that all and every Lord and Lords, of Leet and Leets, and their Stewards within the Precinct of his and their Leet and Leets, ſhall have full Power and Authority within their ſeveral Leets, to enquire and to take Preſentment by the Oath of Jurors, of all and every Offence and Offences in his Behalf and upon ſuch Preſentment had or made to levy by Diſtreſs to the Uſe of the Lord of the Leet, all ſuch Sums of Money as ſo ſhall be forfeited; And moreover that it ſhall be lawful for the Lord of every ſuch Leet where ſuch Preſentment ſhall be made, to recover to his own Uſe any ſuch Forfeiture, by Action of Debt in any of the Queen's Majeſty's Courts of Record, whereunto no Eſſoin, Protection or Wager of Law ſhall be allowed.

in a Cottage. 2dly, This Branch concerning Inmates extends to Cottages, as well made before this Statute as after. 3dly, And as well to Cottages having 4 Acres of Ground or more laid to them, as is aforeſaid, as others that have no Ground at all.

4thly, Upon Pain that every Owner or Occupier of any ſuch Cottage, placing or willingly ſuffering any ſuch Inmate or other Family than one, ſhall forfeit and loſe to the Lord of the Leet, within which ſuch Cottage ſhall be, the Sum of 10 s. for every Month &c. This Month is to accounted according to the Computation of 28 Days.

5thly, And upon ſuch Preſentment had or made to levy by Diſtreſs &c. that is to ſell the Diſtreſs which he ſhall take within the Precinct of the Leet for ſuch Forfeiture, and if there be a Surpluſage over the Value of the Forfeitute, to deliver it to the Owner.

6thly, This Act extends as well to Inmates in Cottages, in any City, Town Corporate, Ancient Borough, or Market Town, as in any other Cottage whereſoever. See Hill. 8 Jac. C. B. Rot. 2193. between Paſe v. Peat, in Treſpaſs, Salop, a Juſtification upon this Statute for the Penalty for keeping an Inmate.

7thly, Hereby the Act gives Election to the Lord, to take his Remedy by Action of Debt, in any of the King's Courts of Record. 2 Inſt. 738.

4. *Par.* 4. *Be it further enacted by the Authority aforeſaid, that all Juſtices of Aſſiſes and Juſtices of Peace in their open Seſſions, and every Lord within the Precinct of his Leet and none others, ſhall have full Power and Authority within their ſeveral Limits and Juriſdictions, to enquire of, hear and determine all Offences contrary to this preſent Act, as well by Indictment as otherwiſe by Preſentment or Information, and to award Execution, for the levying the ſeveral Forfeitures aforeſaid by Fieri facias, Elegit, Capias, or otherwiſe, as the Cauſe ſhall require.*

In this Branch theſe 4 things are to be obſerved. 1ſt. That theſe three, viz. Juſtices of Aſſiſe, Juſtices of Peace, and Lords of Leets, and no other Judges or Juſtices can enquire &c. any of the Offences againſt this Statute. And therefore the Sheriff in his Turn cannot enquire &c. of any Offence againſt this Statute, committed within the Leet of any Lord thereof.

2dly, That they may enquire hear and determine all Offences &c. ſo as there is a concurrent Power in every of theſe three, and the Judgment &c. of ſuch one of them as do firſt enquire, hear and determine the ſame ſhall ſtand; And each of them may enquire of all and every of the Offences againſt this Act.

3dly, As well by Indictment or otherwiſe by Preſentment or Information. The difference between an Indictment and Preſentment is this, that the Indictment is drawn and ingroſſed in Parchment in Form of Law, and delivered to the Jurors to be enquired of &c. And a Preſentment is properly that which the Jurors find and preſent to the Court, without any former Indictment delivered to them, which afterwards is reduced to a formed Indictment. Every Indictment which is found by the Jurors, is preſented by them to the Court; For the Record ſays Juratores præſentant &c. when they find an Indictment. And therefore every Indictment is a Preſentment, but every Preſentment is not an Indictment.

Offences found in Leets, Court Barons &c. are commonly called Preſentments, which was the Reaſon that this Act, giving Juriſdiction to a Leet, doth uſe this Word (Preſentment) in this and the 3d Branch.

4thly, By the Words (to award Execution by Fieri Facias, Elegit, Capias or otherwiſe) greater Juriſdiction is given to the Leet, than it had at the Common Law, ſo as the Lord of the Leet has by the 3d Branch, Power to levy the Forfeiture due to him, by Diſtreſs or by Action of Debt by the Common Law; And by this 4th Branch, by Fieri Facias, Elegit or Capias. 2 Inſt. 739.

5. *S* 5. *This Statute ſhall not extend to any Cottage, in any City, or Town Corporate, or Ancient Borough, or Market-Town, nor to any Cottages for the Habitation of Workmen in Mineral Works, Coal-Mines, Quarries, or Delfs, or in the making of Brick, Tile, Lime, or Coals; ſo as the ſame Cottages be not above one Mile diſtant from the Works, and be uſed only for the Habitation of Workmen.*

See pl. 2 and the Notes there.

See pl 2 and the Notes there.

6 S. 6. *This Act ſhall not extend to any Cottage within a Mile of the Sea, or upon the ſide of any Navigable River, where the Admiral ought to have Juriſdiction, ſo long as no Perſon ſhall therein Inhabit, but a Sailor, or Man of manual Occupation, for making, furniſhing or victualling, of any Veſſel uſed to ſerve on the Sea; nor to any Cottage in any Foreſt, Chaſe, Warren or Park, for ſo long as no Perſon ſhall therein Inhabit, but an Under Keeper or Warrener; Nor to any Cottage heretofore made, ſo long as no other Perſon ſhall therein Inhabit, but a common Herdman or Shepherd, for keeping the Cattle of the Town, or a Poor, Lame, Sick, or Aged, or impotent Perſon; Nor to any Cottage, which upon Complaint to the Juſtices of Aſſiſe, or to the Quarter Seſſions, ſhall by their Order be decreed to continue for Habitation, during ſo long a Time, as by ſuch Decree ſhall be limited.*

7. 43 *Eliz. cap.* 2. *Par.* 5. *Enacts that it ſhall and may be lawful for the Churchwardens and Overſeers, or the greater part of them, by the Leave of the Lord or Lords of the Manor, whereof any Waſte or Common within their Pariſh, is or ſhall be Parcel, and upon Agreement before with him or them made in Writing under the Hands and Seals of the ſaid Lord or Lords, or otherwiſe according to any Order to be ſet down by the Juſtices of Peace of the ſaid County at their general Quarter Seſſions, or the greater part of them, by like Leave and Agreement of the ſaid Lord or Lords in Writing, under his or their Hands and Seals to erect, build, and ſet up in fit and convenient Places of Habitation in ſuch Waſte or Common, at the general Charges of the Pariſh, or otherwiſe of the Hundred or County as aforeſaid, to be taxed, rated, and gathered in Manner before expreſſed, convenient Houſes of Dwelling for the ſaid impotent Poor. And alſo to place Inmates or more Families than one in one Cottage or Houſe, One Act made in the* 31 *Year of her Majeſties Reign, entitled an Act againſt the erecting and maintaining of Cottages or any therein contained to the contrary notwithſtanding, which Cottages and Places for Inmates ſhall not at any time hereafter be uſed or employed to or for any other Habitation, but only for impotent or poor of the ſame Pariſh, that ſhall be there placed from Time to Time by the Churchwardens and Overſeers of the Poor of the ſame Pariſh or the moſt Part of them, upon the Pains and Forfeitures contained in the ſaid former Act, made in the ſaid* 31 *Year of her Majeſties Reign.*

8. The *Inconveniences* that grow by unlawful Cottages, and Inmates in Cottages againſt this Statute, as appears by the Preamble *are great*, being Neſts to hatch Idleneſs, the Mother of Pickings, Thievings, ſtealing of Wood &c. tending alſo to the Prejudice of lawful Commoners; for that new erected Cottages within the Memory of Man, though they have 4 Acres of Ground or more laid to them according to the Act, ought not to Common in the Waſtes of the Lord; but the greateſt Inconvenience of all this is, the ill breeding and educating of Youth, which Inconveniences may be eaſily helped and remedied by the Proviſions of this excellent Law, if Lords of Leets and their Stewards would look to the Execution of this Act, which we hold the readieſt Means; For albeit the Cottage erected or converted, cannot by any Proviſion in this Statute be demoliſhed or pulled down, yet the Execution of the Penalty of this Act will make it uninhabitable and work the deſired Effect, and they may alſo be amerced for wrongful Commoning in the Court Baron. 2 Inſt. 740.

* S. C. cited and the Court held this to be a Statute. 1 Salk. 195. pl. 1 in the Caſe of The King v. Everard Hill. 13 W. 3.

9. J. S. was *indicted* upon the Statute 31 Eliz. *becauſe he had erected a Cottage* 5 *Years laſt paſt, and had not allotted* 4 *Acres of Land according to the ſaid Statute De terris menſurandis* 33 E. 1. and had continued it ever ſince. The firſt Exception was that this Indictment was for erecting a Cottage 5 Years paſt, whereas every Offence ought to be puniſhed within 2 Years by Indictment or Information, by the expreſs Words of the Statute of 31 Eliz. cap. 5. otherwiſe it is not puniſhable, and therefore not good. 2dly, Becauſe he does not ſay that he voluntarily

continued

continued it; which are the expreſs Words of the Statute. 3dly, For that it is to be by *the Statute De terris Menſurandis* whereas there is not * any ſuch Statute, but it is *an Ordinance only*; And for theſe Cauſes the Indictment was held to be ill; and the Defendant was diſcharged. Cro. J. 603, 604. pl. 30. Mich. 18 Jac. B. R. Stowes Caſe.

10. One was indicted for erecting of a Cottage. It was moved that the Indictment was inſufficient, for that the Words of 31 Eliz. cap. 7. are (ſhall willingly uphold, maintain, and continue) and the Indictment is only, *that he continued, and ſo wants the Words (willingly upheld)* according to the Statute. It did *not appear* in the Indictment *that it was newly erected*, for it is only that he continued, and not that he erected. The Indictment was quaſhed, becauſe being a Penal Law, it was not purſued. Godb. 383. pl. 470. Paſch. 3 Car. B. R. Day's Caſe.

11. If Lord of a Manor will ſuffer poor Men to erect Cottages on his Waſte, though he takes *no Rent* for them, yet a Fine ſhall be ſet upon them, and the *Lord of the Manor ſhall pay the Fine*, and after the Cottage built, if the *Manor deſcends*, or is convey'd to another, if he receives any ſmall *Rent* for the Continuance of that Cottage, he alſo ſhall pay the Fine that ſhall be aſſeſs'd, becauſe he *upholds*. Agreed. Jo. 272, 273. 8 Car. Chriſtian Smith's Caſe. In Itin'. Windſor.

12. The *Statute* which gives Power to erect Cottages in the Waſte for poor People does not *extend to Waſte within Foreſts*. Jo. 269. in Itinere Windſor, 8 Car. in Whitlock's Caſe.

13. In Windleſham in the County of Surry there were diverſe Cottages and Incloſures made upon the *King's Soil*, and afterwards the *King ſells the Manor*; Per Noy Attorney General this has not *diſpenc'd with* the Purpreſtures, but the *Patentee muſt be fin'd for the Continuance* of them, and they are to be pull'd down if they be not now *arrented*; For elſe the King's Grant ſhould be taken by Implication to continue a Wrong to his Foreſt, which the King never intended, and accordingly they were fin'd and arrented. Jo. 277. in Itin'. Windſor. 8 Car. the Caſe of the Manor of Windleſham.

14. If the *Juſtice in Eyre* will *grant a Licence to erect* a Cottage, or make an Incloſure, and *Arrent* in perpetuum at a certain Rent, yet if this be not done, ſitting the Court, it may be pull'd down again, and if ſuch a Licence and Arrentation be *Sedente Curia*, it is good for ever. Jo. 277. in Itin' Windſor. 8 Car. Matthew's Caſe.

Building without a Licence of the King, or Juſtice in Eyre, makes it *Purpreſture* to the Foreſt, and is *fineable*, and the Houſe *demoliſhable*. Jenk. 230. pl. 100. cites D. 240.

15. A Caſe in the Exchequer was cited by the Judge to be reſolv'd, that a Cottage cannot by Law claim to *have Common*. Clayt. 48. pl. 82. Auguſt 1636. before Barkley J. Anon.

It is a good Claim for Cattle *Levant and Couchant*, but whether Sans Nombre the Law is not ſettled, but per Cur. it would be hard to defeat it if it were preſcrib'd to *Sans Nombre*. 6 Mod. 114. Hill. 2 Ann. B. R. Anon.

16. It was moved to quaſh an *Indictment* for erecting of a Cottage contrary to the Statute; the Exception taken to it *was, that he erected a Cottage for Habitation*, but did *not ſay it was uſed or inhabited as a Cottage*; But Bacon J. anſwered, that *the very Erection* of it *is an Offence* againſt the Statute, and therefore the Indictment did very well purſue the Words of the Statute, and therefore would not quaſh it. Sty. 33. Trin. 23 Car. B. R. Anon.

17. Though *the Erecting* of a Cottage *may be preſented at a Court Leet for the Information of the Lord, yet the Court cannot amerce the Offender for it*;

it; Arg. and ſo was the Opinion of the whole Court. Saund. 135. Hill. 19 & 20 Car. 2. in Caſe of the King v. Dickenſon.

2 Keb. 340. pl 10. S. C. the Court held, that the Statute was only common Informers by Actions Popular; but neither this Statute, nor any other of like Nature did intend to prevent the King in ſuch Informations as are by the King's Attorney, or in the Name of Sir Thomas Fanſhaw, and the King in all Penal Laws may chuſe his Court, and is not bound by the Negative Words of any Penal Statute.

18. A *Pariſh erected a Cottage*, but *without any Allowance by a Juſtice of Peace*, as the Statute 31 Eliz. cap. 7. directs; Upon an Information in B. R. Iſſue was taken, and found for the King. It was moved to quaſh the Information, for that it does not lie in B. R. *the Statute directing, that the Offence* therein expreſs'd *ſhould be puniſh'd by Juſtices of Aſſiſe, Juſtices of Peace in their Seſſions, and Lords of Leets, and no others.* But Twiſden J. held, that notwithſtanding the Words *(and no others)* the Attorney General might ſue in B. R. or in other Court if he pleaſe; Sed adjornatur. Sid. 359. pl. 2. Paſch. 20 Car. 2. B. R. the King v. Moſely.

Saund. 135. S. C. Saunders moved to quaſh it, becauſe it is not founded on the Statute 31 Eliz. cap. 7. of Cottages, for it is not ſaid that the Cottage was erected for Habitation, as the Statute directs, neither does it conclude Contra Formam Statuti as it ought, if it had been founded on the Statute; and moreover, the Statute appoints a certain Penalty of 10 l. and the Statute is not in this Caſe therein purſued; Then at Common Law the Preſentment is not good, becauſe the Incroachment on the Lord of a Manor incloſing Waſte and erecting a Cottage therein, is no Offence preſentable in a Leet for which the Offender ought to be amerced; for it is not a publick Nuſance, but a particular Damage to the Lord; for although it may be preſented at the Court Leet by the Information of the Lord, yet the Court cannot amerce the Offender for it, for the Court Leet can amerce for nothing but publick Nuſances, and not for a particular Treſpaſs to the Lord, or any other for which they may have Action to recover Damages. And ſo are the Books of 48 E. 3. a. 12 H. 4. 8. b. expreſsly, and ſo it was the Opinion of the whole Court, and the Preſentment was quaſhed.

19. Saunders excepted to a *Preſentment in a Leet for erecting a Cottage, noi averring there is no Land laid to it, nor contra Formam Statuti*; and it is no Offence at Common Law, therefore they cannot amerce by Aſſeerors otherwiſe than on the Statute, which the Court agreed, and that this lies at Common Law, *nor is four Acres of Copyhold ſufficient* within the Statute; but being for incroaching ſo many Foot, and erecting a Cottage Ad commune Nocumentum, per Curiam, it is well as to this, not as to the Cottage only, & Affirmatur. 2 Keb. 606. pl. 38. Hill. 21 & 22 Car. 2. B. R. the King v. Dickinſon.

20. *Exception* was taken to an Indictment *for continuing a Cottage 11 Months, from 5 October, 21 Car. till the taking of the Inqueſt, viz. for the Space of 11 Months, which was 12 Months*, ſed non Allocatur on 31 Eliz. cap. 7. and 18 Eliz. cap. but *if there were fewer Months it were void*, but they would not quaſh it till pleaded; But Hale Ch. J. ſaid, it was ill and uncertain either way; Adjornatur. 3 Keb. 25. pl. 40. Paſch. 25 Car. 2. B. R. the King v. Naſh.

21. Indictment for erecting a Cottage for Habitation contra Stat' was quaſhed, becauſe it was *not ſaid that any inhabited it*. For elſe it is no Offence, per Rainsford and Moreton qui ſoli aderant. Mod. 295. pl. 38. Trin. 29 Car. 2. B. R. the King v. Neville.

22. Exceptions were taken to an *Indictment* for erecting and continuing a Cottage, viz. 1ſt. It is *ſaid not to have four Acres aſſigned to it the firſt of November, which is a Month before the Erection was*, for that is *laid to be the 1ſt of December, a Month after*; for this it was quaſhed; Other Exceptions there were to it which were not moved; As 2dly, it is *ſaid to be at a certain Place infra eandem Parochiam*, and *names no Pariſh before*. 3dly, It does *not ſay the Erection was contra Formam Statuti, but only the Continuance is ſo concluded to be*. 4thly, It does *not ſay the Cottage was the Defendant's*, and perhaps he might be only a Bricklayer or Carpenter, and built it for another, and ſo not within this Act of 31 Eliz. cap. 7. againſt Cottages and Inmates. 5thly, It does *not ſay it was*

Pro Habitatione Hominum, perhaps it is only a Cow-Houſe, or Dog-Kennel, and ſo not within the Statute; Sed Quære of theſe Exceptions. 2 Show. 280. pl. 270. Hill. 34 & 35 Car. 2. B. R. the King v. Cane.

23. Exceptions were taken to an Indictment for erecting and continuing a Cottage, becauſe it does *not ſay there were not* 4 *Acres aſſigned to thereto*, which if there were it is no Offence within the Statute againſt Inmates and Cottages, and for this Exception it was quaſhed. 2 Show. 343. pl. 351. Paſch. 35 Car. 2. The King v. Strange.

24. The Reporter ſays he had another *Exception* thereto, which is, *that it is for Continuance of a Cottage unlawfully erected by the Space of one Year, from the* 10*th of December* 35 *Car.* 2. *and the Indictment is taken the* 15*th of January in that Year.* 2 Show. 343. pl. 351. Paſch. 35 Car. 2. in Caſe of The King v. Strange.

25. The Reporter adds a *Quære, if* in thoſe Indictments for Continuance of Cottages, *they ought not to ſay they were inhabited during the Time they are continued*; for it ſeems Prima Facie that ſuch Continuance is no Offence, unleſs the Cottage be inhabited, on this Reaſon, *becauſe by the Statute the* 4 *Acres of Land are aſſigned to be occupied therewith ſo long as it ſhall be inhabited*, and therefore if never inhabited, there needs not 4 Acres, nor can 4 Acres be occupied therewith, unleſs it be inhabited; An Houſe built not for Habitation, but for another Uſe, as a Granary, or the like, is not a Cottage within this Law, but if afterwards uſed for Habitation it becomes ſuch, and the Continuance is an Offence, therefore e contra if not inhabited; for the Continuance can be no Offence; for by it, unleſs inhabited, there is no Damage to the Publick, nor ſeems it within the Intention of the Statute, which by its Proviſion againſt Inmates, ſeems deſigned to prevent Increaſe of poor Families &c. If it ſhould be otherwiſe than a Cottage once erected for Habitation, though afterwards converted to another Uſe, yet its Continuance ſhould be an Offence, which ſeems an Hardſhip; Conſider of this, for on firſt Thoughts there is ſome Semblance of Reaſon of it. 2 Show. 343, 344. pl. 351. Paſch. 35 Car. 2. in Caſe of The King v. Strange.

26. An Indictment was for erecting a Cottage and not laying four Acres of Land to it, & Ulterius præſentant quod continuavit contra Formam Statuti; Judgment was for the King. It was aſſign'd for Error (inter alia) that it was *not ſaid Pro Habitatione*, and it is no Offence unleſs it be inhabited; For the Statute was made to prevent the Building of Cottages for the Habitation of poor People; Sed non Allocatur; For *if it be applied to any other Uſe than a Dwelling-Houſe the Defendant muſt ſhew it*, or otherwiſe it ſhall be intended to be built for his Habitation. 4 Mod. 345. Mich. 6 W. & M. in B. R. the King and Queen v. Trobridge.

Comb. 307. the King and Queen v. Trubridge. S. C. and the Exception, that the Continuavit was not ſaid Pro Habitatione, was over-ruled; For it ſuffices that it is according to the Statute.——Skinn. 564. pl 11. The King v. Trowbridge S. C. and the ſaid Exception was over-ruled; For the Continuance ſhall be intended to be Pro Habitatione when the Erection was ſo; and if it was otherwiſe it ought to be ſhewn on the other Side.

27. Two Juſtices made an *Order*, viz. being informed that the Overſeers of the Poor had refuſed *to pay* 10 *s. a Week* to a poor Man; they Order that the ſaid Overſeers ſhall continue to pay him the Arrears *till they find him a Houſe.* It was objected againſt this Order, that the Overſeers have not Power to find a Houſe for him, that muſt be done by the Conſent of the Lord of the Manor, or by the Juſtices in Seſſions; It did not appear that he was poor or impotent, and for theſe Reaſons it was quaſhed. 5 Mod. 397. Paſch. 10 W. 3. Anon.

28. An Order of Seſſions for ſuppreſſing a Cottage upon 31 Eliz. cap.

7. was quaſh'd; becauſe Cottages *are not to be ſuppreſſed by Indictment* 12 Mod. 406. Trin. 12 W. 3 the King v. Harris.

29. A Cottage *implies* a Court and Backſide; For a Cottage without four Acres of Land is againſt the Statute 31 Eliz. cap. 7. per Cur. 6 Mod. 114. Hill. 2 Ann. B. R. Anon.

30. An *Information* was moved for againſt a Man *for building an Houſe upon a Common, and encloſing Part thereof*, and denied per Cur. and ſaid, that they would not call a Perſon into this Court for a Thing of that Nature, but the Parties grieved might take their proper Remedy. The like Motion had been denied formerly for the ſame Reaſon. MS Rep. Mich. 5 Geo. B. R. Anon.

31. 30 *Years Poſſeſſion* of a Cottage erected by the Poſſeſſor, without Licence or Order, is a good *Title againſt the Lord* of the Manor by Virtue of the *Statute of Limitations*, if he ſhould bring an *Ejectment* to recover the Poſſeſſion. 8 Mod. 287. Trin. 10 Geo. the King v. Wilby Pariſh.

32. A. built a Cottage without Licence on the Waſte of a Manor, and died, and his *Heir is in Poſſeſſion by Deſcent*, this is a good Title againſt any Eſcheat the Lord might have at Common Law. 8 Mod. 287, 288. Trin. 10 Geo. in the Caſe of the King v. Pariſhoners of Wilby.

For more of Cottages in General, See **Copyhold. Nuſance.** And other Proper Titles.

Covenant.

(A) How; [In what Caſes, and *On what Deeds.*]

1. **An Action of Covenant lies** upon a Deed indented **without Doubt.**

2. [So] **An Action of Covenant lies upon a** Deed-Poll.

Tho' Covenant may be brought upon a Deed-Poll, yet the Party muſt be nam'd in the Deed; Per Cur. 1 Salk. 197. pl. 3. Paſch. 6 W. & M. in B. R. in Caſe of Green v. Horne. —— Plaintiff may take Benefit, tho' not mentioned as a Party; and if I oblige myſelf to pay J. S. 100 l. the Obligation is made to him for what Benefit it is. Comb. 219. in S. C.

Cro. J. 505. pl. 17. Bennus v. Guyldley. S. C adjudg'd per tot. Cur. for the Defendant

3. As **if** A. recovers a Debt againſt B. **and** B. pays the Money to A. **upon which** A. releaſes all Actions and Executions &c. to B. and by the ſame Deed promiſes him to diſcharge the ſaid Judgment, and not to ſue Execution **thereupon, and** after ſues Execution **againſt him, he may have a Writ of Covenant upon this Deed, and** not an Action upon the Caſe. **Mich. 16 Jac. B. R. between.** *Bemiſke* and *Hilderſly* **adjudged.**

See tit. Actions (P) pl. 21. S. C.

4. *In London* a Man ſhall have a Writ of Covenant *without a Deed* for the Covenant broken. F. N. B. 146 (A) cited 27 H. 6. 10.

5. If a Man makes a *Leaſe by Deed-Poll* and the *Leſſor puts out the Leſſee, he ſhall have a Writ of Covenant* upon the Deed-Poll; *but if a Stranger who has no Right puts out the Leſſee, he ſhall not have* a Writ of Covenant againſt the Leſſor, *becauſe he hath Remedy by Action againſt the Stranger*; *But if the Stranger enter by Eigne Title* upon the Leſſee, then he ſhall have an Action againſt the Leſſor, becauſe he hath no other Remedy. F. N. B. 145. (K)

Vaugh. 119. Arg. cites S. C. —— F. N. B. in the new Notes there (b) cites 17 E. 3 Covenant. 2. accordingly.

6. Covenant *lies only where the Thing* covenanted to be done *is to be done in Futuro by the Perſon of any*, and differs from the Caſe where it refers to a Thing which is not to be done by the Perſon of any, but to a Thing to be executed in itſelf, Arg. Pl. C. 138. a. 6 E. 6.

Vent. 26. Arg. cite S. C. that *where a Covenant terminates in itſelf it is not properly a Covenant, but a Defeaſance*; And Windham ſaid, (to which the other Juſtices agreed) *that a Covenant to do a preſent Act is not properly a Covenant; As to ſtand Seiſed.*

7. If a *Man leaſes Lands for Life by Deed, and afterwards puts Leſſee out*, the Leſſee ſhall not have a Writ of Covenant againſt him, but an *Aſſiſe*. F. N. B. 145. (M).

Ibid. in the new Notes there (c) ſays See 20 E. 3. Judgment 177. accordant, for that the Demiſe is good from his Entry.

8. The Queen by Letters Patents licenſed A. to buy and tranſport hither Wool. *A. by Indenture grants the Licence to B. for 8 Years, and* in Conſideration thereof, *B. covenants to pay him 100 l. yearly at Lady Day and Michaelmas, and that every Year at Lady-Day, or within 20 Days after, he will make a new Bond for Payment of the Money; provided that if B. does not yearly make the Bond, or fails in Payment* of the Money, that then, from thenceforth *the Indenture, and every Clauſe &c. therein contained ſhall be void*, and B. fails of making the Obligation at the firſt Day, yet A. may have an Action upon the Covenant, for it was ſaid the Intent of the Parties was only that it ſhould be void as to have any Benefit of Covenants broken in Futuro, but as to Covenants broken before, it was never their Intent but that the Party ſhould have Advantage of them. Cro. E. 77, 78. pl. 37. Mich. 29 & 30 Eliz. Nuns v. Gee.

In Debt upon an Obligation with *Condition to perform Covenants* in an Indenture of Leaſe the Defendant *pleads, that after, and before the Original purchaſed, the Indenture was by the Aſſent of the Plaintiff, and the Defendant cancelled* and avoided, and ſo demands Judgment if Action, and ſeems by Coke clearly, that the Plea is not good without Averment that no Covenant was broken before the cancelling of the Indenture. 2 Brownl. 167. Paſch. 10 Jac. C. B. Anon.

9. M. made a *Leaſe of a Parſonage* of D. *for ſeven Years*, and did *covenant to ſave the Leſſee harmleſs againſt B. the Parſon* &c. in that Caſe it was held, *if the Parſon ſue the Covenant by Right or Wrong*, an Action lies upon the Covenant. Brownl. 21. Trin. 9 Jac. cites it as Mapet's Caſe.

10. Leaſe by the Dean and Chapter of Norwich, dated 38 Eliz. to T. for 99 Years; afterward they made another Leaſe 42 Eliz. to W. for three Lives, and covenanted to ſave him harmleſs againſt T. the firſt Leſſee; It was agreed that the Covenant is good, and yet in force; for *when an Eſtate is created in which is implied a Covenant in Law*, there *if the Eſtate be void, the Covenant is void alſo*; *but* when there is an *expreſs Covenant in Deed*, there it *is otherwiſe*, altho' the Leaſe be void or voidable; *As* if he Covenants *that the Leſſee ſhall enjoy during the Term, and the Leſſee reſigns*, yet is the Covenant good, altho' the Term is gone. Ow. 136. Paſch. 10 Jac. Waller v. the Dean and Chapter of Norwich.

Mo. 875. pl. 1223 Walter v. the Dean and Chapter of Norwich. S. C. and the Juſtices agreed, that becauſe the Dean who made the Leaſe was living at the Time of the Eviction, 21. S. C. and Coke

the Leaſe was not void; and therefore it was adjudged for the Plaintiff. —— Brownl.

Coke ſaid, that if the Leaſe was originally void, yet Covenant would lie; for otherwiſe great Miſchief might happen; for a Dean might make a Leaſe to A. To-Day and keep it ſecret, and To-Morrow make a Leaſe to B. and covenant for Enjoyment, and ſo avoid the ſecond Leaſe. —— 2 Brownl. 134. S. C. argued. —— Ibid 158. Waters v. the Dean and Chapter of Norwich. S. C. argued by the Counſel, and afterwards by the Court, and Judgment for the Plaintiff.

11. A Man may covenant *with two ſeverally*, becauſe it differs from the Caſe of a Bond, for Covenant ſounds only in Damages; but the Covenantees ought *not to join in Actions*; Per Crawley and Reeve J. Mar. 103. pl. 176 Trin. 17 Car. C. B.

12. If I make a *Leaſe for Years, reſerving Rent to a Stranger*, an Action of Covenant will lie for the Party to pay the Rent to the Stranger; Per Hale Ch. J. Mod. 113. pl. 12 Paſch. 26 Car. 2. B. R. in Caſe of Deering v. Farrington.

13. If a *Man aſſigns a Bond* to J. S. *and afterwards receives the Money* of the Obligor, if he do not *immediately pay it over to the Aſſignee*, the Aſſignee may maintain an Action of Covenant againſt him upon the Word Aſſignavit, and that was the Caſe of Deering v. ..... Per Holt Ch. J. 2 Ld. Raym. Rep. 1242. Hill 4 Ann. in Caſe of Seignorett v. Noguire.

14. *So* if the *Obligee covenants to aſſign a Bond to J. S. ſuch a Day*, and will not aſſign it, or before the Day receives the Money of the Obligor, by which means he has diſabled himſelf to aſſign it, in either of theſe Caſes it is a Breach of Covenant, and yet in Strictneſs a Bond is not aſſignable. Per Holt Ch. J. 2 Ld. Raym. Rep. 1242. Hill. 4 Ann. in Caſe of Seignorett v. Noguire.

(B) Upon what Deed [*the Plaintiff might have Debt or Covenant.*]

Cro. J. 399. pl. 6. and 521. pl. 7. S. C. adjudged. —— Roll Rep. 359. pl. 11. S. C. and 2 Roll Rep. 63. S. C. adjudged —— 3 Bulſt. 163. S. C. —— Godb. 276. pl. 391. S. C. adjornatur. —— Poph. 136, 137. S. C. & S. P. agreed that it is a Covenant, eſpecially it being in the Caſe of the Queen. —— Cro. J. 240. pl 5. Paſch. 8 Jac. B. R. Ewre v. Strickland, S. P. reſolved; for when he takes by the Patent he conſents to all Things therein. —— Bulſt. 21. S. C. but not S. P.

1. A Writ of Covenant lies upon the King's Patent, though there is no Counter-part ſealed by the Leſſee who is to be charged. My Reports 14 Jac. B. *Sir J. Brett and Cumberland* for his own Acceptance. Hill. 16 Ja. B. R. in a new Action between the ſame Parties adjudged again.

Fol. 513.

2. If A. grants a Rent to B. payable at a certain Feaſt yearly, and covenants to pay the Rent at the Feaſt, an Action of Covenant lies for Nonpayment, though he might have had an Action of Debt for it. M. 7 Ja. B. between *Stronge and Wats*, per Curiam adjudged.

3. If one Man covenants with another to pay him 20 l. at a Day, though he may have an Action of Debt for the 20 l. yet he may have a Writ of Covenant at his Election. H. 7 Ja. B. per Curiam.

4. A Man ſhall have a Writ of Covenant *againſt the Sureties*, who became Sureties, or *gave Security that a Man ſhould perform ſuch Covenant* &c. F. N. B. 146. (B) cites 39 E. 3. 9.

15. If

5. If I *grant to* my *Tenant for Life, that he ſhall not be impeachable for Waſte*, he ſhall not plead this in Bar, but ſhall have an Action of Covenant thereupon. Bridgm. 117. cites 21 H. 7. 30. per Fineux, in John de Puſeto's Caſe.

6. If I *grant to one againſt whom I have Cauſe of Action, that I will not ſue him within a Year*, this is not any Suſpenſion of the Action. Bridgm. 117. cites 21 H. 7. 30. per Brudenell, and ſays, that upon this Caſe it is to be obſerved, that *I may ſue, and that the other is put to his Action of Covenant.*

7. A *Covenant in Law* will go to lawful Eviction, *though the Leaſe be void*; *But* as to a *Covenant real to warrant* and defend, there *muſt be a Title paramount*, and a lawful Eviction; and Covenants in Leaſes ſhall be taken beneficially for the Leſſees; per Coke Ch. J. Brownl. 21. Trin. 9 Jac. in Caſe of Walter v. Dean &c. of Norwich.

8. Action of Covenant will lie *on a void Leaſe*, and Sir E. Coke ſaid, that ſo it ſhould do though the Leaſe was originally void. Brownl. 21. Trin. 9 Jac. Walter v. the Dean and Chapter of Norwich. 2 Brownl. 163, 164. Paſch. 10 Jac. C. B. the S. C. & S. P. held by Coke Ch. J. accordingly.

9. It lies *upon a Warranty in a Fine ſur Conceſſit* by Feme Covert and that without Deed as ſeem'd admitted by all. Sid. 466. pl. 1. Mich. 22 Car. 2. B. R. Wootton v. Hale. Lev. 301. S. C. held accordingly. —— Mod. 290. S. C. & S. P. agreed by the Counſel on both ſides and the Court. ——2 Saund. 177. S. C. held accordingly.

10. A Covenant will lie *on a Bond*; For it proves an Agreement per Lord Chancellor, Chan. Caſe. 294. Mich. 28 Car. 2. Hill v. Carr. Though a Bond is not aſſignable in Point of Intereſt yet if it be aſſigned, it is a Covenant that the Aſſignee ſhall receive the Money to his own Uſe; Per Holt Ch. J. obiter Lord Raym. Rep. 683. Trin. 13 W. 3.

(C) What *Words* will *make* an *expreſs Covenant.*

1. THESE Words in a Deed of Leaſe, [viz.] and the Leſſee ſhall repair the Mills (being the Thing leaſed) as often as need ſhall require, and ſhall leave them ſufficiently repaired at the end of the Term, make a Covenant, becauſe it is a clear Agreement of the Parties, and otherwiſe the Words *ſhall leave*, &c. ſhould have no effect. My Reports, 14. Ja. *Sir J. Brett v. Cumberland.* Hill. 16. Ja. B. R. between the ſame Parties adjudged again in a new Action. 3 Bulſt. 163. S. C. adjudg'd.—— Cro. J. 399. pl. 6. S. C. adjudged that the Words, which were in the Queen's Patent, amount to a Covenant on the Part of the Leſſee and by his Acceptance of the Leaſe, he is bound by the Covenant. —— Ibid. 521. pl. 7. S. C. & S. P. reſolv'd accordingly.——Poph. 136, 137. S. C. agreed that it is a Covenant; for being by Indenture it is the Words of both Parties, and it is more ſtrong being in the Caſe of the Queen. —— Godb. 276. pl. 391. S. C. & S. P adjudg'd; but as to another Point Adjornatur.——Roll Rep. 359. pl. 11. S. C. & S. P. Arg. quod fuit conceſſum per Coke Ch. J. For he ſaid that it is a clear Agreement. And the Reporter ſays, that this was afterwards adjudg'd, but that it was admitted by the Court and Counſel of the other-ſide, but there was no other ſpeaking of it.——2. Roll Rep. 63. S. C. and reſolv'd that it was an expreſs Covenant and Judgment accordingly.

2. If Leſſee for Years covenants to repair, &c. provided always, and it is agreed, that the Leſſor ſhall find great Timber, &c. This Brownl. 23. S. C. & S. P. admitted.

—— Hob. 12 pl. 24. S. C. but S. P. does not appear. —— Sid. 423. pl. 1. cites S. C. adjudg'd.

makes a Covenant of the Part of the Leſſor to find great Timber, by the Word (agreed) and it ſhall not be a Qualification of the Covenant of the Leſſee. Tr. 12 Ja. B. between *Holder and Taylor*, per Curiam.

3. But if the Leſſee covenants to repair, provided always, that the Leſſor ſhall find great Timber, without the Word (agreed) this Proviſo ſhall not make any Covenant on the Part of the Leſſor, but it ſhall be only a Qualification of the Covenant of the Leſſee. Tr. 12. Ja. B. between *Holder and Taylor*, per Curiam.

Cro 128. pl. 3. Geery v. Reaſon. S. C adjudg'd without Argument for the Defendant

4. If there are Articles of Agreement made by Indenture between A. and B. in which A. agrees that B. ſhall have a Houſe in a Street in London for certain Years, Provided, and upon Condition, that B. ſhall receive and pay the Rents of the other Houſes of A. in the ſame Street mentioned in a Schedule annexed to the Indenture; and it is further agreed, that B. for his Labour in the Collection of the ſaid Rents, ſhall have the Overplus of the Rents over and and above ſuch a certain Sum. This is not any Covenant on the Part of B. to bind him to receive and pay the Rents mentioned in the Shedule, but the Proviſo and Condition only will make the Eſtate of B. void in the Houſe, (this being a Leaſe) and will not make a Covenant. Mich. 4 Car. B. R. between *Geary and Read*, adjudged upon a Demurrer upon a Declaration, which intratur, P. 4 Car. Rot. 432.

Br. Covenant pl. 4 cites S. C. —— Fitzh Covenant pl. 16. cites S. C.

5. If A. leaſes to B. for Years, upon Condition, that he ſhall acquit the Leſſor of ordinary and extraordinary Charges, and ſhall keep and leave the Houſes at the End of the Term in as good plight as he found them. If he does not leave them well repaired at the End of the Term, an Action of Covenant lies. 40 E. 3. 5. b.

* And. 19. pl. 38 Gravenor v. Parker S. C. and the Court held accordingly. —— Bendl. 72. pl. 115 and ſays the Reaſons of the Juſtices ſeem'd to be 1ſt, becauſe the Words of the Proviſo do not purport a Grant but an Agreement, and conſequently ſounds in Covenant and not in Demiſe. 2dly, If it ſhould be a Demiſe then there was not any Perſon to take it; For it is appointed to the Executors and Aſſigns of Leſſee, whereas there are no ſuch in rerum Natura nor Parties to the Deed. —— Hob. 35. in pl. 39 cites S. C.

6. If A. leaſes to B. for Life, with a Proviſo, that if the Leſſee dies within the Term of 40 Years, that then the Executors of the Leſſee ſhall have it for ſo many of the Years as amount to the Number of 40 Years, to be accounted for the Date of the Indenture of Leaſe. This proviſo ſhall not be a Leaſe, but only a Covenant, * D. 3. 4 Ma. 150. S. 83. † Co. 1. Rect. Ched. 155.

S C. held accordingly —— S. C. cited Mo. 247. in pl. 388. —— S. C. cited Mo. 480.

† Mo. 478 pl 684 Mich. 37 & 38 Eliz. B. R. Loyd v. Wilkinſon. S C. What Words will make a Leaſe for Years. See tit. Eſtate (T. a) (U. a) (X. a) &c.

7. If there are Articles of Agreement between A. and B. by which it is agreed, upon a Marriage intended between A. and C. that all the Stock of C. ſhall remain in the Hands of B. till A. ſhall make a certain Jointure to C. ipſo B. annuatim ſolvendo to A. Intereſſe proinde, ſecundum Ratam 8 l. per Centum, (*) &c. If B. does not pay the ſaid Intereſt, an Action of Covenant lies againſt him upon theſe Words, becauſe every Agreement by Deed is a Covenant, and otherwiſe A. ſhall not have any Remedy for the Money. M. 8 Car. B. R. between *Croſs and Northey*, adjudged upon Demurrer. Intratur, P. 8 Rot. I my ſelf being de Conſilio Querentis.

* Fo. 519.

8. If A. makes a Deed to B. in theſe Words; I have in my Cuſtody one Writing Obligatory, in which Writing Obligatory one

William now ſtandeth bound to the ſaid B. for the Payment of 400 l. upon ſuch a Day, being the proper Money of B. and I will be ready at all Times, when I ſhall be required, to redeliver the ſame Writing Obligatory to the ſaid B. If B. after demands the ſaid Obligation of A. and he refuſes to deliver it, B. may have an Action of Covenant upon this Deed by Force of the Words (and I will be ready at all Times when I ſhall be required to deliver the ſame.) Paſch. 11 Car. B. R. between *Walker and Walker*, adjudged upon a Demurrer per Curiam, this Matter being opened and perceived by the Court, but the Council of the other Part did not queſtion it. Intratur, Hill. 11 Caroli. Rot. 311.

9. If a Man conveys Land to another in Fee with Warranty, and after the Land is evicted by Elder Title for certain Years; the Grantee of the Land may have an Action of Covenant upon the ſaid Words againſt the Grantor upon this Eviction, though the Warranty be annexed to a Freehold; For the ſaid Words make a Covenant if a Chattel be evicted, and a Warranty if a Freehold be demanded. By Reports, Paſch. 12 Ja. in Camera Scaccarii, between *Rudge and Pincombe*, adjudged in a Writ of Error. Vide ſame Caſe, P. 12 Jac. B. Roberts Reports 5.

Roll Rep. 25. pl. 3. S. C. and Judgment in B. R. affirmed. ——Yelv. 139. Pincombe v. Rudge S. C. adjudged. ——Nov. 131. Pinckard v. Ridge S. C. held accordingly. ——Hob. 3. pl. 6 S. C. held accordingly in Cam. Scacc. be all the Judges. ——Jenk. 291. pl. 31. S. C. ——S. C. cited by Hobart Ch. J. Hob. 28. ——Jenk. 224. pl. 83. cites S. C.

10. If a Man leaſes for Years, reſerving a Rent, an Action of Covenant lies for Non-payment of the Rent; for the reddendo of the Rent is an Agreement for Payment of the Rent, which will make a Covenant.

S. P. per Cur. and ſaid it had been ſo reſolv'd many times before.

But dubitatur if the Word (Reddendo) will maintain an Action of Covenant upon a Leaſe for Life 2 Jo. 102. Paſch. 30 Car. 2. B. R. Harper v. Bird. ——2 Lev. 206. Harper v. Burgh, S. C. held that the Reddendo is a Covenant in Law. ——S. C. cited 3 Lev. 155. ——Reſervation of Rent by the ſeveral Words (Yeilding and Paying) in a Leaſe for Years ſeems to be an expreſs Covenant. For it is the Agreement of both Parties, viz. of the Leſſor and Leſſee; Per Roll Ch. J. and Judgment, Niſi. Sty. 387. Mich. 1653. Newton v. Osborn. ——S P. by Roll Ch. J. to which the Court agreed, and ſo a Judgment was affirmed. Sty. 407. Hill. 1654. Porter v. Swetnam. Vent. 10. Hill. 20 & 21 Car. 2. B. R. at the End of the Caſe of Nurſtie v. Hall is a Nota, that it was ſaid in that Caſe that the Word Reddendum makes a Covenant —— Covenant will lie upon the Words Yeilding and Paying. Arg. 2 Mod. 174. ——Leaſe for Years rendring Rent free of all Taxes &c. The Word *Rendering &c. makes a* Covenant. Carth. 35. Paſch. 2 W. & M. in B. R. Giles v. Hooper.

11. In Debt the Leſſor *leaſed* by Indenture *for* 20 *Years*, *rendring* 10 *l. per Annum at Eaſter*, and other Covenants in the Indenture ex utraque parte &c. *and to the Performance of all the Covenants* &c. *each by the ſame Indenture bound himſelf to the other in* 20 *l.* and for Non-Payment of the 10 l. at Eaſter he brought Action of the 20 l. and per Newton clearly it does not lie; For reſervation of the Rent and Non-Payment of it is no Covenant, and Action of Covenant does not lie of it, therefore this is no Breach of Covenant, ad quod nemo reſpondit. Br. Covenant. pl. 21 cites 22 H. 6. 58.

12. *Abſq*; *Impetitione*, *Denegatione*, *Reſtrictione*, in an Indenture amount to Covenant. Le. 277. pl. 375. Hill 26 Eliz. B. R. Biſhop v. Redman.

13. The Words of an Obligation were, *I am content to give to A.* 10 *l. at Michaelmas* and 10 l. at our Lady Day; either Debt or Covenant lies upon it, per Cur. 3 Le 119. pl. 199. Mich. 27 Eliz. B. R. Anon.

14. Gawdy

a Le 104. pl. 131. S. C. says it was holden for clear Law.

14. Gawdy and Fenner J. were of Opinion, that upon a *Leaſe for Years by Indenture by Dimiſit & ad firmam tradidit*, that a Covenant lies againſt the Leſſor if he enters; but if a Stranger enters it lies not without an expreſs Warranty; for in a Covenant againſt the Leſſor upon theſe Words he ſhall recover the Term itſelf. Cro. E. 214. pl. 6. Hill. 33 Eliz. B. R. Andrews's Caſe.

See Condition (T) pl. 15. and the Notes there.

15. A. *putting the Houſe in Repair* B. covenants to keep it in Repair; they are mutual Covenants. Raym. 183. per Twiſden J. cites it as reſolv'd Cro. Jac. 645. Salter [Slater] v. Stone, and Sty. 140. Bragg v. Nightingale.

S. C. cited 6 Mod. 35. by Holt Ch. J by the Name of Lutton and Craidon in the later End of Styles, that where a Thing is awarded to be done upon Payment and Receipt, that Tender of Payment and Refuſal intitles the Party to it as much as an actual Payment, and ſaid the Authorities have been ſo ever ſince.

16. *L. articled* by Indenture with C. *to pay C.* 110 *l.* at a certain Day, *C. covenanted*, that *upon Payment* thereof to him he would *give an Acquittance, and enter into a Bond of* 400 *l. to* L. *to ſave him harmleſs from all Claims to ſuch Lands in L's Poſſeſſion.* L. tendered the Money at the Day to C. who refuſed to receive it, and give an Acquittance, and to enter into the Bond. L. brought Covenant, and aſſigned the Breach that he tendered the Money, and that C. refuſed to accept it &c. Per Glyn Ch. J. Here is no Breach aſſigned to ground an Action upon; For the Articles are, that upon the Receipt of the Money the Defendant ſhould give the Acquittance &c. and enter into the Bond; And it may be that it was the Intent of the Parties that it ſhould be in C's Election to receive 110 l. or not, and the Plaintiff is not prejudic'd by the Defendant's not receiving it; And Judgment Niſi &c. Sty. 481. Trin. 1655. London v. Craven.

17. Covenant was brought upon theſe Words, viz. *I oblige myſelf to pay ſo much at ſuch a Day, and ſo much at another Day*; Per Cur. clearly this Action lies, eſpecially if both the Days of Payment are not paſt; but Hale Ch. B. doubted how the Law would be if the Words were *Teneri & firmiter Obligari*; becauſe thoſe Words found in Debt, and not in Covenant. Hardr. 178. Hill. 12 & 13 Car. 2. in the Exchequer. Norris's Caſe.

Keb 842. pl 31 S. C. 860. pl. 71. S. C. 195. pl. 66. S. C. Twiſden agreed the Proviſo but a Covenant, but conceived that it referr'd to a future Conveyance, and that it ſhould be averr'd that he had made a Conveyance of the Office, and that ſaying licet he had performed all Covenants on his Part is not ſufficient; but by the other Opinions Judgment was given for the Plaintiff.

18. In Debt the Plaintiff declared on *Articles* indented, by which *C.* upon the Marriage of M. *was to receive the Marriage Portion of M's Wife*, being 1500 l. *and that C. ſhould convey an Office to M. provided that M. out of the firſt Profits of the Office, ſhould pay to C.* 500 *l* and averred that he had conveyed the Office, and that M. had received 500 l. of the Profits, but had not paid it to the Plaintiff, and upon Demurrer to the Declaration adjudged that the Action lies upon this Proviſo; for *it is not a Condition or Defeaſance, but an Agreement to pay* the 500 l. Lev. 155. Hill. 16 & 17 Car. 2. B. R. Clapham v. Moyle.

3 Keb. 617. pl. 84. Hill. 27 & 28 Car. 2. B. R. Brown v. Haywood ſeems to be S. C.

19. The Court inclined, that the Words *Grant and Infeoff, in Caſe of a Freehold*, doth not amount to a Covenant, or Warranty; Adjornatur. 3 Keb. 188. pl. 33. Trin. 25 Car. 2. B. R. Anon.

the Court held the Word (Grant) no Warranty of a Freehold, but only in Caſe of a Leaſe for Years, and Judgment accordingly.——Freem. Rep. 414 pl. 547. Browning v. Honeywood S. C. that they do not amount to a Covenant, but *Dedi* will make a Warranty; And ſays that if a *Chattle be evicted* Dedi will make a Covenant, come ſemble, and cites Hob. 4. [pl. 6. in Caſe of Pincomb v. Ridge]

* Noy 131. in Caſe of Pinkard v. Ridge S. P.——See pl. 9.

20. If

20. If a Man *aſſigns* and transfers *a Thing* which is *not aſſignable* or transferrable; As if he aſſigns &c. all the Money that ſhall be allow'd him by a foreign State in lieu of his Share in a Ship, this is a Covenant, and *it is all one as if he had covenanted, that he ſhould have* all the Money which he ſhould recover for Loſs of his Ship; Per Hale Ch. J. But Twiſden ſeem'd to doubt; But Judgment. Mod. 113. pl. 12. Paſch. 26 Car. 2. B. R. Deering v. Farrington.

3 Keb. 304. pl. 45. S. C. and per Hale, though the Words *Aſſign, Tranſfer, and ſet over, do not amount to a Covenant a-*

gainſt an Eigne Title, yet againſt the Covenantor himſelf it will amount to a Covenant ——Freem. Rep. 368. pl. 473. S. C. and by Hale Ch. J. though it does not amount to an Implicit Covenant againſt Eigne Ttles, yet they may be good againſt the Party himſelf and his Acts.——S. C. cited by Holt Ch. J. Lord Raym. Rep 683. and ſays, that though a Bond is not aſſignable in Point of Intereſt, yet the aſſigning thereof is a Covenant that the Aſſignee ſhall receive the Money to his own Uſe.——S P. by Holt Ch. J. and S C. cited. 2 Lord Raym. Rep. 1242. Hill. 4 Ann. in Caſe of Seignioret v. Noguire.——S. C. cited. Arg. 2. Lord Raym. 1419. Trin. 12 Geo. in Caſe of Frontin v. Small.

21. *Where ever the Intent of the Parties can be collected out of a Deed* for the doing or not doing a Thing, a Covenant lies. 1 Chan. Caſes. 294. Mich. 28 Car. 2. Hill v. Carr.

Covenant will lie upon *any Words in a Deed purporting an Agreement for Payment of Money.* Lev. 47. Mich. 13 Car. 2. B. R. Brice v. Carre, Emerſon & al'.

22. *Any Thing under the Hand and Seal* of the Parties *which imports* an Agreement will *amount to* a Covenant; Per Lord Chancellor. 2 Mod. 91 Paſch. 28 Car. 2. in Canc. Hollis v. Carr.

23. Debt upon Bond with *Condition*, that *the Obligor did acknowlege to be indebted to the Obligee in* 40*l. which he did thereby covenant to pay when ſuch a Bill of Coſts ſhould be ſtated by two Attornies indifferently, to be choſen by them*; Plaintiff declares, that he named an Attorney, and deſired the Defendant to name another, which he refuſed. It was objected, that this ſhall not be taken for a Covenant, but an Agreement, ſolvendum the Money when the Bill of Coſts ſhould be ſtated, and by the Plaintiff's own ſhewing, the Bill was not ſtated, therefore nothing is due; Sed per Cur. this is not a Solvendum but a Covenant, which does not take away the Duty aſcertained by the Obligation, and if it ſhould not be a Covenant, then it would be in the Power of the Obligor, whether ever it ſhould be payable. 2 Mod. 266. Mich. 29 Car. 2. C. B. Otway v. Holdip.

24. Where a *Party to a Deed agrees to pay*, it amounts to a Covenant, though the Words Covenant, Grant, &c. are wanting. 2 Mod. 268, 269. Mich. 29 Car. 2. C. B. Harwood v. Hilliard.

25. 6 *Annæ, cap.* 25. *All Covenants, Conditions, and Agreements, in every Grant, Leaſe, or Copy of Court-Roll ſo made, ſhall be good in Law, according to the Contents of the ſame againſt the Reverſioner, and againſt them to whom the Intereſt thereof ſhall come.*

(D) In what Caſes the *Heir* or *Executor* ſhall be *bound* by the expreſs Covenant of the Teſtator, *without naming* them.

1. IN every Caſe **where the Teſtator is bound by a Covenant, the Executor ſhall be bound by it,** if it be not determined by his Death. 48 E. 3. 2.

Br. Covenant, pl. 12. cites 48 E. 3. 1. S. C. & S. P. by Finch, but Perſey e contra.—— Fitzh. Covenant, pl 21. cites 48 E. 3. 22 [but ſe ms miſprinted,

and that it ſhould be 1. b 2 a. pl 4.]S. P held by Finch, according to Roll; But Wyche negavit omnino.—— Shelley and Fitzherbert held, that Covenant lies in ſuch Caſe againſt the Executor, and ſaid, that ſo is 47 E. 3. 23. But Baldwin ſaid privately, that there is a Difference between an Obligation wherein there is no Mention of Executor, in as much as it is a Duty, but Covenant is Executory, and ſounds only in Damage and Tort, which (as it ſeems) dies with the Perſon &c. D 14. a. pl. 69. Trin. 28 H. 8. Anon.—— Cro E. 552, 553. pl. 3. Arg. cites S. C. and per Popham, Clench, and Fenner, (abſente Gawdy) a Covenant lies againſt an Executor in every Caſe, though he be not named; unleſs it is ſuch a Covenant as is to be performed by the Perſon of the Teſtator, which the Executor cannot perform.

2. A Man *covenants that neither he nor his Heirs ſhall erect any Mill in ſuch a Place*, and afterwards *he erects a Mill*, and an Action of Covenant is thereupon brought by [againſt] the Heir, and well. 4 H. 3. 57. And ſo it is if the *Leſſor ouſts the Leſſee and dies, or Tenant in Tail leaſes for Years and dies, and the Iſſue ouſts the Termor*, he ſhall have Covenant againſt the Executors. F. N. B. 145. (D) in the new Notes there (a) cites 47 E. 3. 22. 48 E. 3. 2. but 38 E. 3. is, that he ſhall recover the whole in Damages againſt the Heir if he has Aſſets by Deſcent, per Knivet and Skipwith.

3. Covenant does not lie againſt the Heir *upon a Leaſe by Deed of his Anceſtor, if there is not expreſs Warranty in the Indenture of the Leſſor and his Heirs, and* alſo, *that the Heir has Aſſets.* Br. Garranties, pl. 89. cites 32 H. 6. 32.

4. *But* where a Man *covenants to make a Houſe, and does not do it*, but dies, Covenant *lies againſt Executors*, and not againſt the Heir, becauſe there is no expreſs Warranty againſt the Heir, and yet it lies againſt the Teſtator himſelf, for he broke the Covenant. Br. Garranties, pl. 89. cites 32 H. 6. 32.

5. A *Bond* of 1600 l. Penalty entered into 19 Jac. *to perform Covenants* in an Indenture, the Covenantors *to pay* 77 *l. per Ann. till* 1100 *l. be paid*, but the Covenants not being performed, the *Plaintiff ſues the Bond againſt the Heir* of the Obligor. This Court declared, that the 1100 l. and Intereſt thereupon, ought to be paid, and by the Conſent of the Parties ordered and decreed, that the 1600 l. the Penalty of the ſaid Bond, be paid by the ſaid Defendant to the Plaintiff, in full of all the Principal and Intereſt, and 40 l. Coſts. Chan. Rep. 201, 202. 13 Car. 2. Wake v. Calley.

6. The Lien of a Covenant muſt be *meaſured by the Eſtate in the Rent or Thing granted*; Per Withers J. 2 Show. 334. Mich. 35 Car. 2. B. R. in Caſe of Fountain v. Guavers.

Executor.

(E) [Where it lies againſt an Executor, tho' not nam'd.]

Br. Covenant pl. 12. cites S. C — Fitzh. Covenant pl. 21. cites 48. E. 3. 22.

1. IF a Man covenants, That A. ſhall ſerve B. as an Apprentice for 7 Years, and dies; if A. departs within the Term, a Writ of Covenant lies againſt the Executor of the Covenantor, without naming. 48. E. 3. 2.

[But See (D) pl. 1. Supra and the Notes there.]

2. Covenant was brought *againſt two Executors*, inaſmuch as their Teſtator put one to the Plaintiff to be his *Apprentice* who *departed within the Term*, and it was awarded that one Executor ſhall not anſwer without the other; For the one appear'd and other not, and the Statute does

does not remedy but in Debt and Detinue, and therefore by this Judgment it ſeems that Covenant lies againſt Executors. Br. Covenant. pl. 11. cites 47. E. 3. 22.

3. If *Tenant in Tail leaſes for Years and dies*, and the *Iſſue ouſts the Termor*, he ſhall have Covenant againſt the Executor, which Finch deny'd. Ibid.

4. In Covenant againſt Executors the Plaintiff counted that the *Teſtator put his Son to the Plaintiff for 7 Years Apprentice, and bound himſelf* to the Covenant *without mentioning his Executors*, and that *after the Death of the Teſtator the Son departed without leave* within the Term, and came to the Executors and they retain'd him; and per Perſey Covenant does not lie againſt the Executors; For it does not lie againſt any, but againſt him who is Party; as this Word *Dedi* is no Warranty to bind the Heir, but only him who made it, and ſo ſhall not bind Executors where Executors are not mention'd in the Deed; But Finch Contra, but Wiche was clear that the Executor is not bound, if Executor be not named in the Deed. Per Kirton if a Man Covenants to ſerve another for 7 Years and dies within the Term, the Covenant is diſcharg'd by the Death of the Party. And per Perſey where a Man leaſes for Years without Warranty, and the Termor is ouſted, the Termor ſhall not have Covenant; But Finch Contra clearly. Br. Covenant. pl. 12. cites 48 E. 3. 1.

5. If the *Leſſee for Years covenants for him to repair the Houſes leaſed within 6 Years*, and dies within the 6 Years, yet his Executors ſhall make the Reparation, for it may be made by the Executors within the 6 Years as well as by himſelf; and ſo ſee Executors bound tho' he does not expreſs the Executors in the Covenant, but if the Covenant had been to have been perform'd by himſelf during his Life, the Executors ſhall not be charged. Br. Covenant pl. 50. cites 10 H. 7. 18.

6. Termor Covenants *to build a new Houſe*, Leaſe expires and Leſſee dies, yet his Executor is chargeable. Lat. 261. cites D. 14. D. 14. a. pl. 69. Trin. 28 H. 8. Anon. S. C.

7. *A. Tenant for Life Remainder to B. in Fee*; the *Feoffee for Life makes a Leaſe for Years by (Dedi & Dimiſi)* rendring Rent *by Indenture and dies within the Term*, he in *Remainder enters*; the *Leſſee for Years brings Covenant againſt the Executors of A.* Welch, Brown and Dyer, held that it did not lie againſt the Executor, 1ſt. Becauſe it is not ſhewn, that he was Poſſeſſed at the Time of the Entry of him in the Remainder, but only by Implication. 2dly. For that without an expreſs Covenant the Executor ſhall not be charged in this Caſe; for *the Covenant in Law expired with the Term.* But Weſton e contra, becauſe the Leaſe was by Indenture. But Judgement was afterwards given againſt the Plaintiff. D. 257. a. b. pl. 13, 14. Mich. 9 Eliz. 7. Mo. 74. pl. 204. Swan v. Scarles S C. adjudged that the Action did not lie.——And. 12. pl. 25. Scrles v. Stranſham, S. C. adjudg'd accordingly.—S. P. ruled accordingly on Demurrer to the Declaration, becauſe no expreſs Covenant or Warranty of the Term was compris'd in the Indenture, but only a naked Covenant in Law. D. 257. b. at the End of the principal Caſe cites Trin. 22 Eliz. Broderidge v. Windſor.——And 12 cites S. C. accordingly.——F. N. B. 145. (M) in the new Notes there (c) cites S. C.

If *Leſſee for Life leaſes for Years and dies within the Term, ſo as the Leſſee* is *evicted* by him in Remainder or Reverſion, It was Reſolv'd per 3 J. that by this *Covenant in Law* the Executors were not liable. Wentw. Off. Ex. 125. and ſays, that in the ſame Caſe Ld. Dyer ſets down another Reſolution after, to the ſame Effect.

But Serjeant Benloe reporting this later Caſe to be of a *Leaſe made by Tenant in Tayle, before the Statute* 32 *H.* 8. *or not warrantable by it* ſets down the Opinion contrarily, viz. that the Action was maintainable againſt the Executors. Wentw. Off. Ex. 125. —— Bendl. 150. pl. 208. Mich. 7 & 8 Eliz. Stranſham v. Searles. S. C. that this Action does not lie againſt the ſaid Defendants, and cites D. 257. pl. 14.

But

But if the *Eviction* or Breach of Covenant is *in the Life of Teſtator* himſelf, no doubt but the Executor is chargeable. Wentw. Off Ex 125.——D. 257. a. Marg. pl. 13. ſays, that ſuch Judgment was given Trin. 22 Eliz. Rot. 659. in Caſe of **Browining v. Winſor** in Suffolk, the Opinion then was, that this Action lies againſt the Executor of the Leſſor, who was Tenant in Tail.——Ibid. cites Paſch. 41 Eliz. Rot. 194. B. R. **Noke v. James**, where it was ruled accordingly, where Tenant Pur auter Vie made a Leaſe for Years, and Ceſty que Vie died during the Term.

8. *But if A. ſeiſed in Fee makes a Leaſe for Years and dies, and the Heir ouſts the Leſſee*, he ſhall have *Covenant againſt the Heir*, for this Covenant in Law, *by reaſon of the Privity*; Per Brown. D. 257. b. in the Caſe above.

9. *Leſſee of* a Term of a *Stock of Sheep covenants* for him and Aſſignes, Covenant lies not againſt Aſſignee becauſe it is Perſonal, but it binds Executors. Lat. 261. cites 5 Rep. 17. [Paſch. 25. Eliz.] Spencer's Caſe.

10. Leſſee for Years of a Houſe covenants *to repair it within* 6 *Years*, within which Term he dies, no Reparation being made. Covenant lies againſt Executors; otherwiſe if the Covenant had been to repair during Life. Per Cook. Arg. 4 Le 171.

11. Covenant by Leſſee *to Repair* the Buildings, or to *pay the Quit Rents* iſſuing out of the Land, Executor muſt do it tho' the Covenant mentioned nothing of Executors, tho' Opinions have been otherwiſe, and that it was only a perſonal Covenant, and cites 5 Rep. 24. [Mich. 43 & 44 Eliz. B. R.] **Windſor v. Hide** which at firſt ſeemed ſtrong to that Purpoſe, but at laſt it was reſolved to be a Covenant running with the Eſtate, and ſo both Executor and Aſſignee bound to perform it. Wentw. Off. Ex. 124.

12. Wentw. Off. Ex. 124 ſays, that in the ſaid Caſe of **Windſor v. Hide** (5 Rep. 24) [Mich. 43 & 44 Eliz. B. R.] it was ſaid per Popham Ch. J. that if the Covenant had been *to do a Collateral Act* neither the Executor nor Aſſignee had been bound, and therefore a Covenant by Leſſee for Years *to build a new Houſe upon the Land within two Years and dies within the Time*, he doubted if the Executor be bound to do it or not, tho' it concerns the Land let, ſo as the Rent or Fine was the leſs in reſpect of the Charge of the new Buildings; But if the Covenant had been to build it *elſewhere than upon the Land* let, or to *do any other collateral Thing not pertinent to the Land* let, it is clear the Executors are not bound; Yet, if the Time expired in Leſſee's Life, and the Covenant not performed, the Executors are liable to Damages in Action of Covenant as the Judges agreed, tho' not Reported by Ld. Coke, who Reported only the Point in Queſtion.

13. If a Man makes a *Leaſe by* theſe Words, (*Demiſe and Grant*) and dies, an Action of Covenant lies not againſt his Executors, as it is ſaid in 9 Eliz. D. 257; but otherwiſe upon expreſs Covenant; Per Coke Ch. J. 2 Brownl. 214. Hill. 7 Jac.

14. Q. Eliz. made a Leaſe for Years, rendring Rent and the Leſſee covenanted to pay it. The Q. died and the Reverſion deſcended to K. James. Afterwards the *Leſſee aſſign'd over the Term*, and the *Aſſignee paid the Rent to the King*; The King *granted the Reverſion by his Letters Patents*; The *Patentee accepted the Rent of the Aſſignee*; The Patentee brought Action of *Covenant againſt the Executors of the firſt Leſſee*, and *adjudg'd maintainable*, which muſt neceſſarily be by reaſon of the Privity of Contract transferr'd by force of the ſaid Statute of 32 *H.* 8. *cap.* 34 For there was no Privity of Eſtate between them, the firſt Leſſee having aſſign'd his Term before the Grant of the Reverſion to the Patentee, which proves that by the Statute *the Privity of Contract is transferr'd*; cited per Cur. Saund. 240, 241. Paſch. 21 Car. B. R. as Cro. J. 521, 522. [pl. 7. Hill. 16. Jac. B. R. Brett v. Cumberland.]

15. Leaſe

15. Leaſe for Years, *yielding and paying Rent* &c. the *Leſſee died.* In Covenant againſt his Executor, Exception was taken that this was a meer Covenant in Law compriſed only in the Words Yielding and Paying, and not an expreſs Covenant to pay it; But Roll Ch. J. anſwered that *Covenant lies againſt an Executor upon a Covenant in Law*, tho' he be not named, though otherwiſe of an Heir; For he is not bound by ſuch a Covenant. Sty. 387. Mich. 1653. Newton v. Osborne.

16. In Covenant againſt an Executor upon a *Writing ſealed by Teſtator, whereby he covenanted to be accountable for all Monies as ſhould be charged by him upon A. payable to B.* The Court held that the Action well lay, and that it would do ſo upon *any Words purporting an Agreement for Payment of Money.* Lev. 47. Mich. 13 Car. 2. B. R. Brice v. Carre and Emerſon. Keb. 155. pl. 96. Brice v. Curr, S. C. it was inſiſted, that Action of Account lies properly, and not Covenant for Money ſo delivered; But per Cur. there is no other Remedy againſt Executors, and had it been againſt the Party himſelf, ſuch Agreement being by one Perſon to pay Money charged upon J. S. for which an Account lies not, he being not chargeable as Receiver or Bailiff, the only Remedy is by Covenant. Judgment for the Plaintiff.

17. *Executrix of a Termor for Years aſſigns all the Reſidue of the ſaid Term to P. reſerving a Rent, and P. covenanted to repair.* P. dies, and *P's Executrix enters* &c. Parker Ch. J. held, that P's Executrix may be charged either as Executrix or Aſſignee, but that Plaintiff having charged her as Executrix, Judgment can be only againſt her as Executrix. 1 Salk. 316. pl. 25. Trin. 9 Ann. B. R. Buckley v. Pirk. 10 Mod. 12. S. C. that if an Executor takes Poſſeſſion of the Term of the Teſtator, and an Action is brought againſt him in the Debet & Detinet for Rent or Non-Repairs, it is abſurd for him to plead no Aſſets ultra what will ſatisfy ſuch and ſuch Judgments, becauſe in ſuch a Caſe the Surplus of the Profits, Rents, and Repairs deducted, is all that is Aſſets, and liable to the Judgment, and therefore the reſt of the Profits are ſo appropriated to the Payment of Rents and Repairs, as not to be exhauſted by Debts.

(F) Covenant *in Law.* In what Caſes the Law will create a Covenant *without the Words of the Party.*

1. **If a Man** leaſes for Years, and ouſts the Termor, **he ſhall have Covenant againſt him, though there be no expreſs Covenant in the Deed.** * 48 E. 3. 2. b. † 7. Br. Covenant, pl. 12. cites S. C. & S. P. per Parſey, that Termor ſhall not have Covenant, but Finch e contra clearly. ——— Fitzh. Covenant, pl. 21. S. P. by Parſey, (ut ſupra) but Finch ſaid it was an erroneous Opinion.

† Br. Treſpaſs, pl. 65. cites S. C.

2. **If a Man** leaſes certain Goods for Years by Indenture, **which** are evicted within the Term, **yet he ſhall not have a Writ of Covenant; for there the** Law does not create any Covenant upon ſuch Perſonal Thing. **Contra Mich. 37 Eliz. between** *Bedford and Bull.* Ow. 104, 105. Bedford v. Hall, S. C. and Fenner and Gawdy held, that Action of Covenant would not lie, but Clench ſeemed e contra; ſed adjornatur.

3. *If* a Man leaſes Land for Years without Warranty, and the *Leſſee is ouſted by J. N. by Title*, there he ſhall not have Writ of Covenant againſt his Leſſor, for he has not broke the Covenant there; Contra if he had made thereof Warranty, but contra per Needham J. tho' no War-

Warranty be in the Deed, yet Writ of Covenant lies. Brooke ſays, and ſo ſee here, and often elſewhere, that Writ of Covenant lies often upon Indenture without this Word (Covenant.) Br. Covenant, pl. 38. cites 32 H. 6. 32. And ſo it was ſaid per Juſticiarios. P. 1 M. 1

See (C) pl. 10. ſupra.

4. If a Man leaſes for Years, *rendring Rent*, this is a Covenant in Law; Per Coke Ch. J. 2 Brownl. 215. cites Dyer 15 H. 8.

5. Leaſe is made for Years, and the Words are ſuch, *and the Leſſee ſhall do ſuch a Thing*, theſe Words imply Covenant without any thing more; Per Cur. Mo. 135. in pl. 280. Trin. 25 Eliz.

6. That *Apprentice* ſhall be loyal, & *Secreta ſua velaret & ſimilia*, without other Words of Covenant expreſſed, thoſe Words imply Covenant. Mo. 135. pl. 280. Trin. 25 Eliz. Stanton's Caſe.

7. Action of Covenant lies upon the Words *Demiſe and Grant*, *in an Indenture of Leaſe*, though there are no other Words comprehending a Warranty in them. Reſolved by all the Juſtices. Cro. J. 73. pl. 1. Trin. 3 Jac. B. R. in Caſe of Stile v. Herring.

S. C. cited Show. 389.

8. A Man made a *Leaſe* for Years, with Exception of divers Things, and *that the Leſſee ſhall have Conveniens Lignum non ſuccidendo &c. vendendo Arbores* &c. Now the *Leſſee cut down Trees*, and the Leſſor brought an Action of Covenant; and the Opinion of the Court was, that the Action would lie, and that it is as a Covenant on the Part of the Leſſee, becauſe the Law gives him reaſonable Eſtovers, and by this Covenant he abridges his Privilege. Mar. 9. Paſch. 15 Car. Anon.

So if a *Leaſe* be made *of an Houſe and Eſtovers*, if the *Leſſor deſtroys all the Wood* out of which &c. Covenant lies.

9. If a Man *grants a Water-Courſe* by Deed, and the *Grantor ſtops it*, the Grantee ſhall have an Action of Covenant; Per 3 Juſtices, and agreed by Twiſden. Saund. 322. Mich. 21 Car. 2. in Caſe of Pomfret v. Ricroft.

Ibid. per 3 Juſtices, which Twiſden J. agreed. —— *So* if a Man *demiſe a middle Room* in an Houſe, and afterwards *does not repair the Roof*, ſo as the Leſſee cannot enjoy the middle Room, Covenant lies; Per Rainsford. But Twiſden J. ſaid, that theſe are voluntary Acts of the Leſſor or Grantor, and it is a *Miſfeaſance* in them to annul and defeat their own Grant; but that in the principal Caſe, [which was a Demiſe of a Houſe, with the Uſe of a Pump, which he ſuffered to be out of Repair, ſo that it became uſeleſs] there is only a *Nonfeaſance*, for which no Action lies; As *if I grant a Way over my Land*, I am not bound to repair this, but if I voluntarily ſtop it, an Action lies againſt me for the Miſfeaſance. Judgment was given in B. R. according to the Opinion of three Juſtices, but was afterwards reverſed in Cam. Scacc. for the Reaſons given by Twiſden. 1 Saund. 322. Mich. 21 Car. 2. B R. in Caſe of Pomfret v. Ricroft —— Sid. 429, 430. pl. 17. S C. adjudged, and Judgment reverſed. —— Vent. 44, 45. S C. adjudged in B. R. by three Juſtices, contra Twiſden. —— 2 Keb. 569. pl. 77. B. R. the S. C. adjudged for the Plaintiff.

10. If a *Leſſor* enters upon the Lands leaſed, and *cuts down the Timber Trees, and carries them away*, whereby the Leſſee loſes the Lops and Shade of them, yet he ſhall not have Covenant, but he may have Treſpaſs, or an Action Sur Caſe upon his ſpecial Damage; and in the Principal Caſe the Leſſee might repair the Pump, for though the Soil, or the Pump, be not granted, yet when the Uſe is granted all is granted whereby the Grantee may have and enjoy ſuch Uſe; Per Twiſden J. Saund. 322. Mich. 21 Car. 2. B. R. in Caſe of Pomfret v. Ricroft.

11. In Articles of Agreement for a Marriage, and Payment of 6000 *l.* Portion, theſe Words, viz. *Whereas it is intended to levy a Fine &c.* amount to a Covenant to levy a Fine; Per Finch C. 2 Mod. 91. Paſch. 28 Car. 2. in Canc. Hollis v. Carr.

12. If the *Leſſee* be *diſtrained by the Lord paramount*, though he cannot have a Writ of Meſne, yet he ſhall have a Writ of Covenant in lieu thereof. Raym 257. Hill. 30 & 31 Car. 2. C. B. and cites Mich. 2 H. 6. 1. b.

13. Covenant

13. Covenant will lie *on a Reſervation*; As where Rent, or ſuch a Room with a Paſſage to it, is reſerved, Covenant will lie on the Words of Reſervation *without any expreſs* Words of Covenant. Carth. 232. Paſch. 4 W. & M. in B. R. Buſh v. Coles. Reſervation of Rent is as a Covenant on Leſſee's Part; Per Gawdy. Cro. E. 657. cites D. 37. 21 H. 7. 37. —— 11 Rep. 51. a. —— See Tit. Conditions (X. a) pl. 1. and the Notes.

14. Per Holt Ch. J. the very *referring a Thing to Arbitration* is a mutual Undertaking, that each Party ſhall perform his Part of the Award; for otherwiſe it cannot be ſaid to be referred. 11 Mod. 170, 171. pl. 8. Paſch. 7 Ann. B. R. Lupart v. Welſon.

15. If a Man *aſſigns a Bond*, and afterwards *brings* an *Action thereon in his Name*, this is a Breach of the Agreement; for *the very Aſſignment imports a Covenant*, that the Aſſignee ſhall bring the Action in the Aſſignor's Name, and recover, and have the Money to his own Uſe. 11 Mod. 171. pl. 8. Paſch. 7 Ann. B. R. Lupart v. Welſon.

(G) In what Caſes the *Law* will *create a* Covenant.

Fol. 520.

1. IF a Man leaſes to me by Indenture the Land of J. S. of which J. S. was ſeiſed at the Time, upon which I enter, and he re-enters, I ſhall have a Writ of Covenant upon this Indenture, though I was not in the Land by the Leaſe, but by Eſtoppel; for the Leſſor is eſtopped to ſay, that I was not in of his Leaſe. Trin. 3 Jac. B. R. between *Stile and Herring* adjudged, and that ſuch Traverſe is not good. Cro. J. 73. pl. 1. S. C. adjudged. —— See Tit. Eſtoppel, (N) pl. 1, 2. S. C.

2. So for the Cauſe aforeſaid, if a Man leaſes to me my own Land, of which I am ſeiſed in Fee, or otherwiſe by Indenture, if I am ouſted by another that hath Right, I ſhall have a Writ of Covenant. Tr. 3 Ja. B. R. in *Stile and Herring's Caſe*, per Curiam. Cro. J. 73. pl. 1. S. C. but S. P. does not clearly appear, tho' it ſeems to be admitted.

3. When a Man leaſes to me the Land of J. S. of which J. S. is ſeiſed at the Time, I ſhall have a Writ of Covenant before Entry upon J. S. and Re-entry by him, for I need not allege an Eviction; for this is a Covenant in Law, which is broke when he is not ſeiſed of the Land at the Time of the Demiſe; for the Word Demiſe imports a Power of Letting, and it is not reaſonable to inforce the Leſſee to enter into the Land, and ſo to commit a Treſpaſs. Hobart's Reports 18. P. 11 Jac. between * *Holder and Taylor* adjudged. Contra Tr. 3 Ja. B. R. in † *Stile's Caſe* before cited * Hob. 12. pl. 24 S. C. and the whole Court was of Opinion, that the Action did lie; but that if it were an expreſs Covenant for Quiet Enjoyment, there perhaps it were otherwiſe. —— Brownl. 23. S. C. but S. P. does not appear.

† Cro. J. 73. pl. 1. S. C. —— See ſupra pl. 1.

4. If a Man leaſes the Land of J. S. by Deed to J. D. J. S. being in Poſſeſſion of the Land at the Time of the Leaſe, and the Leſſee enters upon J. S. who re-enters, yet J. D. ſhall [not] have any Action of Covenant thereupon, becauſe the Covenant in Law ought to be fixed upon an Eſtate, but here was no Eſtate, for it was a void Leaſe, and the Leſſee a Diſſeiſor by his Entry. Mich. 37 Eliz. B. R. in *Ware's Caſe*, per Fenner. Ow. 105. S. P. per Fenner, in the Caſe of Bedford v. Hill. 36 Eliz. B. R.

5. So

If a Man leaſes Lands and Goods, of which Goods the Leſſor was poſſeſſed, although by a wrong Title, and afterwards the Owner ſeizes them, an Action of Covenant will lie; Per Fenner. Ow. 105. 36 Eliz. B. R.

5. So **if a Man leaſes certain** Goods **to J. D.** which are the Goods of another, and in his Poſſeſſion, **if he cannot enjoy them, yet he ſhall not have any Covenant againſt the Leſſor, becauſe he was never a Leſſee. Mich. 37 Eliz. B. R.** *Were's Caſe*, **dubitatur.**

Ow 105. 36 Eliz. S. P. by Fenner, in Caſe of Bedford v. Hall.

9 **If a Man** leaſes Lands **for Years, and a** Stranger enters before the Leſſee enters, **he ſhall not have an Action of Covenant upon this Duſter, becauſe** he was never a Leſſee in Privity **to have the Action. Mich. 37 Eliz. per Fenner.**

7. Indenture of *Leaſe* recited, that *in Conſideration* H. the *Leſſee ſhould build a Mill* upon the Land demiſed, *and a Water-Courſe* by the Land demiſed, F. the Leſſor (the *Defendant*) *leaſed* the ſaid Land to H. (the Plaintiff) *by the Words Dedi & Conceſſi.* The Plaintiff aſſigned the Breach of the ſaid Covenant in Law, in that the *Defendant* had *ſtopped the ſaid Water-courſe ſo made by the Plaintiff*, but in the Indenture *there is not any expreſs Covenant, Clauſe, or Agreement that the Leſſee ſhould enjoy the Water-Courſe* ſo made, but only the *Covenant in Law* ariſing upon the Words Dedi & Conceſſi, which, it ſeems admitted, *cannot extend to a Thing not in Eſſe at the Time of making the Indenture.* Le. 278, 279. pl. 377. Hill. 28 Eliz. B. R. in Caſe of Huddy v. Fiſher.

8. *Bill of Sale of Goods* for 48 l. 10 s. *with a Warranty and Covenant* &c. *Breach aſſigned, that at the Time of Sale the Defendant had not the Poſſeſſion or Property* of the Goods. Demurrer to the Declaration, & Judic' per Quer' in C. B. Writ of Error in B. R. becauſe it could be no Breach; for the Intention of the Covenant was only to ſecure the Poſſeſſion, ſo that till Eviction the Covenant was not broken. Parker Ch. J. ſaid, that the Plaintiff cannot uſe the Goods without being liable to an Action, which is a Damage. If the Caſe had been, that the Defendant had had the equitable Right, but another the legal one, it had been proper to have laid it before the Court by Pleading it; And Eyre J. ſaid, that *Warranty*, in the Nature of it, *imports as well Warranty of the Property as Poſſeſſion*, and Judgment affirmed. 10 Mod. 142. Hill. 11 Ann. B. R. Hacket v. Glover.

(G. 2) What is a Real and what a Perſonal Covenant.

1. WRITS of Covenants are of divers Natures, for ſome are merely Perſonal, and ſome Covenants are Real, to have a real Thing, as Lands and Tenements; As a Covenant *to levy a Fine of Land* is a real Covenant. But a Writ of Covenant, which is mere Perſonal, is, where a Man by Deed does *covenant with another to build* him *a Houſe &c. or to ſerve him, or to infeoff* &c. and he does not the ſame according to the Covenant, then he with whom the Covenant was ſo made ſhall have a Writ of Covenant againſt him; And there is a Note in the Regiſter, which is this, A *Writ of Covenant ought not to be made according to the Law Merchant without a Deed*, becauſe no Plea of Covenant can be without Deed, and every Man ought to be judged according to his Deed, and not by another Law. F. N. B. 145. (A).

They are bound. Wentw. Off. Ex. 123. — Leſſor covenanted *to repair and allow all Taxes*; His Grandſon and Heir being only Tenant for Life, is not liable to thoſe Covenants. Fin. R. 86. Hill. 25 Car. 2. Woodward v. Earl of Lincoln.

2. *Leſſor covenants to pay Quit Rents during the Leaſe*, and dies; Quære, if the Executors of Leſſor are bound to pay them. D. 114. pl. 60. Paſch. 2 & 3 P. & M. Anon.

3. A. *conveys* a Manor *to* 3, *and covenants with them, & quolibet eorum, that he has conveyed a good Eſtate to them*; This is a real Covenant, and goes with the Eſtate, and therefore after Partition, and by Reaſon of the Word (Quolibet) the ſaid Feoffees may have ſeveral Actions of Covenant. Jenk. 252. pl. 63. cites 5 Rep. 18. b. Slingsby's Caſe.

4. Three Coparceners *purchaſe Land in Fee, and mutually covenant* for them and their Heirs, with them and every of them, and their Heirs, *that Survivors ſhall convey to the Heirs of ſuch as ſhall die firſt*, at the Coſts of ſuch Heirs. Reſolved, that this is a real Covenant, and goes to the Heir of Covenantee. Jenk. 241. pl. 24. And. 53. pl. 132. Hill. 16 Eliz. Wotton v. Cook, S. C. —— Bendl. 228. pl. 260. S. C. and the Pleadings. —— D. 337. b. 338. a. pl. 39. S. C.

5. A. grants Lands, and covenants that the Lands ſhall be *diſcharged of the Rent*, it is no more than an ordinary and perſonal Covenant, which muſt charge the Heir only in reſpect of Aſſets, and not otherwiſe, and thereupon the Bill was diſmiſſed. Hard. 87. pl. 5. Mich. 1656. Cook v. the Earl of Arundel. Sale of 14 Shares out of 36 Shares in the New River Water, which 36 Shares were charged with a Rent of 500 l. per Ann. to the Crown in Fee, and 100 l. per Ann. to H. M. for Life; and Sir Hugh, in his Agreement with B had *covenanted to diſcharge the 14 Shares* he had agreed to ſell B. *from thoſe Rents*. Decreed that the Plaintiff ſhould enjoy the 14 Shares diſcharged of thoſe Rents, and that the other 22 Shares ſhould be ſubject to the Plaintiff's Indemnity therein, notwithſtanding it was inſiſted that Sir Hugh's Covenant to diſcharge the 14 Shares of thoſe Rents was merely Perſonal, and did not, nor could charge the whole Rents upon the 22 Shares. Chan. Caſes 212. Trin. 23 Car. 2. Lord Cornbury v. Middleton.

6. Covenant **to renew* a Leaſe for Years, or Lives, binds the Land. Chan. Caſes 260. Paſch. 27 Car. 2. Tanner v. Florence. 9 Mod. 58. S. P. Aſhton. v. Bretland. —— A. leaſes to B. for three Years, and *in Conſideration of B's laying out* 100 *l. in Improvements*, covenants at the End of the Term to grant a *new Leaſe* at the ſame Rent and Covenants. C. *purchaſes* the Inheritance. Decreed that C. make good the Covenant. 2 Vern. 447. pl. 411. Mich. 1703 Richardſon v. Sydenham.

* And it will lie for Aſſignee of the Term againſt the Grantee of the Reverſion; Arg. cites And. pl. 148. —— Fin. R. 212. Finch v. E. of Salisbury, S. P. Show. 194.

7. Covenant *in general to ſettle Lands of ſuch a Value, and names none*, this binds all the Lands; but where a Man ſettles ſuch Lands in particular for a Jointure, and covenants that *they are of ſuch a Value*, there ſuch Covenant binds the Perſon only, and not the Land; Per Mr. Keck, Counſel; and decreed accordingly. Vern. 64. pl. 60. Mich. 1682. Girling v. Lee.

8. A. granted a *Water-Courſe to B and his Heirs through Bl. Acre and Wh. Acre, and covenanted for himſelf, his Heirs, and Aſſigns, to cleanſe the ſame*, and that *Fines and Recoveries* levied &c *of the ſaid Grounds ſhould be, and enure to confirm &c. the ſaid Water-Courſe*. Afterwards a Recovery was had, and a Deed executed, declaring the Uſes as aforeſaid. The Court held, that this was a Covenant running with the Land, and made good by the Recovery. Chan. Prec. 39, 40. pl. 41. Hill. 1691. Holmes v. Buckley. Abr. Equ. Caſes 27. pl. 4 S. C. in totidem Verbis.

9. If *Tenant in Fee grants a Rent-charge* out of Lands, *and covenants to pay it without Deduction, for himſelf and his Heirs*, you may maintain Covenant againſt the Grantor and his Heirs, but not againſt the Aſſignee, for it is a mere Perſonal Covenant, and cannot run with the Land; Per Holt Ch. J. Ld. Raym. Rep. 322. Hill. 9 W. 3. in Caſe of Brewſter v. Kitchin. 1 Salk. 198. pl. 4. Brewſter v. Kidgell, S. C & S. P. by Holt Ch. J. —— *But* the other three Judges thought that this Covenant might charge the Land, being *in Nature of a Grant*, or at leaſt a *Declaration going along with the Grant*, ſhewing in what Manner the Thing granted ſhould be taken, and this being by Indorſement, they reckoned the *Indorſement as Part of the Deed*, and ſo Judgment was given for the Plaintiff. 12 Mod. 171. in S. C

10. Leſſee for 6 Years covenanted *to Dung and Lime the Land durante Termino.* The Court was of Opinion, that this was a Covenant relating to the Land, and for the Advantage of the Reverſion, and would have gone to an Aſſignee without his being named in the Covenant, and attends upon the Reverſion, and the Heir may bring an Action upon it. 10 Mod. 158. Paſch. 12 Ann. B. R. Sail v. Kitchingham.

(G. 3) What a Contract, and what a Covenant.

1. CONTRACT made by A. with 20 others, that A. *ſhall have all the Wool growing* of their Sheep, or all the Skins coming of their Beaſts killed, or *all the Milk* of his Cows, this is not Contract, but Covenant. Mo. 174. pl. 307. Mich. 25 & 26 Eliz. Anon.

Pl. C. Arg. 308. S. P.

2. Covenant *is* when a Man covenants by Deed *to do*, or *that he has done* ſome Thing; As to make a Feoffment &c. But if I covenant and grant with you, that *my black Horſe ſhall henceforward be your Horſe*, you ſhall have no Action of Covenant againſt me, though I retain the Horſe; for I have not covenanted to do any Thing in Futuro, nor that any Thing was done in Time paſt. Finch. 49. b.

(H) What Perſons ſhall have the Advantage of a Covenant. The *Heir*.

Fitzh. Covenant, pl. 17. cites S. C. & S. P. by Thorp. and ſo he ſays of ſome Inhabitants [Tertenants] of the Land, ſo that every one that has the Land ſhall have the Covenant.

1. THERE are ſome Covenats, of which none ſhall have Advantage but the Party or his Heirs. 42 Ed. 3. 4.

But where there is an Alienation of the Eſtate to which &c. the Alienee ſhall have Covenant. Br. Covenant pl. 5. cites 42 E. 3. 3. —— Fitzh. Covenant pl. 5. cites 42. E. 3. 3.

2. Covenants of Inheritance ſhall deſcend to the Heir.

Fitzh. Covenant, pl. 17. cites S. C. —— Br. Covenant, pl. 5. cites S. C.

3. As if an Abbot covenants, and hath uſed Time out of Mind to ſing in the Manor of B. for him and his Servants, his Heirs ſhall have Advantage of this Covenant, if B. does not alien. 42 Ed. 3. 3.

* Br. Covenant, pl. 17. cites S. C. But Brooke ſays that it ſeems if the Lord aliens his Manor, the Heir ſhall not have Covenant. —— Fitzh. Covenant, pl. 13 cites S. C.

4. [So] If an Abbot and Covent covenant to ſing for the Covenantee, and his Heirs in ſuch a Chappel, his Heirs at all Times ſhall have a Writ of Covenant for the not doing thereof. * 2 H. 4. 6. b. adjudged Co. 5. Spencer 18.

If I *covenant with A. and his Heirs to convey Land to him and his Heirs*, there the Feoffment ſhall be to the Heir; For the Heir ſhall have Covenant; Per Hyde Ch. J. Palm. 558. Trin. 4 Car.

5. If a Man make a *Covenant by Deed to another and his Heirs to enfeoff him and his Heirs of the Manor of D.* &c. now if he will not do it, and he, to whom the Covenant is made, dies, his Heir ſhall have a Writ of Covenant upon that Deed. And alſo his Aſſigns ſhall have a Writ of Covenant where the Covenant is made to him and his Aſſigns. F. N. B. 145. (C.)

4 Car. B. R. cites Laughter's Caſe.——S P. And. 55 Hill. 16 Eliz. in pl. 132. Wootton v. Cook S P. and Judgment for the Plaintiff; becauſe in the Regiſter is a Writ of Covenant for the Heir in the ſame and like Caſe, and for that the *Intent of the Covenant* is to have the Inheritance convey'd to the Heir, which Covenant, had it been perform'd, the Heir would have advantage of whatever by the Performance of the Covenant would have accrued; and by the ſame Reaſon he ſhall have the Damages which accrue by the Non-Performance thereof, and therefore and becauſe there is Privity enough between the Father and his Heir to convey the Action Judgment was given as before.

6. If *A. covenants with J. S. and his Heirs to make a Conveyance to one and his Heirs*, his Heir cannot have Covenant, becauſe it is a *Covenant in Groſs*; But *otherwiſe* it is *where ſuch Covenant is in another Conveyance, and goes with the Eſtate.* Palm. 558. cites it as ſaid by Jones J. Paſch. 4 Car.

7. A. *convey'd Land to B. in Fee and covenanted with him his Heirs and Aſſigns for Quiet Enjoyment. B's was ejected* and died and his Executors brought Action of Covenant; Reſolv'd that the Eviction being of the Teſtator, he could not have either Heir or Aſſignee of this Land, but the *Damages ſhall be recovered by the Executors tho' not named in the Covenant*; Becauſe they repreſent the Perſon of the Teſtator. 2 Lev. 26. Mich. 23. Car. 2 B. R. Lucy v. Levington. Vent. 175. S. C. and agreed by all the Juſtices that the Action was brought by the Executor for Damages.

——Freem. Rep. 103. pl. 121. S. C. but S. P. does not appear.

(I) [Who ſhall have advantage of the Covenant.] The *Aſſignee.*

Fol. 521.

1. **IF a Man** leaſes Land to another by Indenture, **this Covenant in Law, created by the word** *(Demiſe)* **ſhall go to the Aſſignee of the Term, and he ſhall have Advantage of it. Contra, Mich. 32 El.**

2. A. by Indenture let an Houſe to J. S. for 40 Years. The *Leſſee covenanted*, with the Leſſor, *that he would repair the Houſe during the Term*; and [*Leſſor covenanted that*] *if it ſhould be repaired upon the View of the Leſſor, then the Leſſee ſhould hold the Leaſe during* 40 *Year after the firſt Years ended.* J. S. granted over his Term by theſe Words, Totum intereſſe terminum & terminos quæ tunc habuit in tenementis illis. Catlin held that the Poſſibility of taking the laſt 40 Years was inherent to the Land and Term and ſhould go to the Aſſignee, but three other Juſtices *held* that the Words (totum Terminum &c. quæ tunc habuit &c.) did not extend to the Poſſibility of the future Term, but *that the Aſſignment was a Separation between the firſt Term, and the Poſſibility of the 2d. and conſequently determined*; For it could not ſtand in Groſs divided from the Term to which it was firſt annex'd. But they all reſolved that *the want of the Word (Aſſigns) did not hinder the Poſſibility*; for it was a thing inherent which paſſed without ſuch Word, but yet they held if there had been the Word (Aſſigns) yet the *Aſſigns could not have taken the Poſſibility.* Mo. 27. pl. 88. Paſch. 3 Eliz. B. R. Skerne's Caſe. S P. and ſeems to be S. C cited as adjudged, per Gawdy. Mo. 159. pl. 300.

3. Upon the Words *Demiſe, Grant* &c. the Aſſignee ſhall have Covenant, tho' but a Covenant in Law. 4 Rep. 80. b. Trin. 41 Eliz. Nokes Caſe, al'. Nokes v. James.

4. *Leſſee for Years makes a Leaſe for Part of the Term*, the *Under-Leſſee covenants not to do ſuch an Act*, and then *Leſſee grants his Reverſion.* The Queſtion was if the Covenant paſs'd to the Grantee or remain'd with the Grantor. It was *inſiſted that the Words of the Statute H. 8. are Affirmative*

Affirmative only that the Grantor ſhall have Action on the Covenant, and that this in Reaſon ought to imply a Negative, that the Grantor ſhall not have Action thereupon and not to ſubject the Leſſee after Aſſignment to two Actions; But to this the Court delivered no Opinion becauſe *the Aſſignment of the Reverſion not being pleaded to be by Deed it was void notwithſtanding Leſſee had attorn'd*, and for this Reaſon Judgment was given for the Plaintiff, notwithſtanding what elſe was alleg'd. 3 Lev. 154. Mich. 35 Car. 2. C. B. Beely v. Purry.

(K) In what Caſes the *Aſſignee* ſhall have Advantage of a Covenant.

Br Covenant, pl 5. cites S. C. ——Fitzh. Covenant, pl. 17. cites. S. C.

1. THERE are ſome **Covenants** that none ſhall have Advantage of but the Party to the Covenant, or his Heirs. 42 Ed. 3. 4.

2. **There are** ſome **Covenants** which have an Inheritance of the Land, **which ſhall paſs with the Land.** 42 Ed. 3. 4.

Br. Covenant, pl 5. cites S. C. but Brooke ſays that it ſeems if the the Lord aliens his Manor, the Heir ſhall not have Covenant, but in this Caſe, the Aſſignee who was a Younger Brother to the Heir and had purchaſed the Manor, brought his Action as Heir to his Grandfather who was the Grantor and Covenantee, whereupon the Defendant pleaded in Abatement of the Writ, to which the Plaintiff replied that he is enfeoff'd of the Manor, and ſo is Tertenant, but this Point was not adjudg'd but it was admitted this is a Covenant which goes with the Land. ——Fitzh. Covenant, pl. 17. cites. S. C. ——Thel. Dig. Lib 1. cap. 21. pl. 3. cites Hill. 42 E. 3. 3. & 2 H. 4. 16. S. P. ——Co. Litt. 385. a. S. P. cites the ſame Caſes and 6 H. 4 1. & 2. —— † Fitzh. Covenant, pl. 13. cites S. C. ——Br. Covenant, pl. 17. cites S. C.

3. As **if a** Prior covenants **with B.** to ſing in a Chappel in his Manor of D. for him and his Servants **(in Fee, as it ſeems to be intended) the Aſſignee of the Manor ſhall have Covenant for a Default.** * 42 E. 3. 3. b. **Co. 5. Spencer 17. b. becauſe it is annexed to Manor.** † 2 H. 4. 6. b.

Fitzh Covenant, pl. 13. cites S. C. —— Br. Covenant, pl. 17. cites S. C. as if the *Chapel is ſevered from the Manor*, it ſeems that the Alienee ſhall not have Covenant, for want of Privity of Blood. ——Co. Litt. 385. a. S. P. and cites S. C

4. But **if the Covenant be** to ſing in the Chappel of a Stranger, **the Aſſignee ſhall not have Covenant.** 2 H. 4. 9. **adjudged, Co. 5. Spencer 18.**

* Br. Covenant, pl. 5. cites S. C. ——Fitzh. Covenant, pl. 17. cites S. C. —— Co. Litt 384. b. 385. a S P. and cites S. C. by Finchden —— 5 Rep. 18. a. S. C. cited by the Reporter, and ſays the Reaſon is, becauſe the Acquittal falls upon the Land.

5. **Upon Equality of** Partition, **if one** Coparcener covenants to acquit the other **and her Heirs** of Suit, **the Aſſignee of the Land ſhall have Benefit of this Covenant.** * 42 Ed. 3. 3. b. **Co. 5. Spencer 18.**

Cro. C. 503. pl. 4. S C. & S. P. agreed per Cur. and Judgment Niſi. —— Ibid. 505. pl. 7. S. C.

6. **If** A. ſeiſed of Lands in Fee conveys **it** by Deed indented to B. and covenants with B. his Heirs and Aſſigns to make **any** other Aſſurance upon Requeſt, **for the better Settlement of the Land &c.** and **after** B. conveys it to C. **who** conveys it to D. **and after** D. requires A. to make another Aſſurance **according to the Covenant, and he refuſes, D. ſhall have an Action of Covenant in this Caſe againſt A. by the Common Law, as Aſſignee to B. Tr. 14 Car. B. R.** between

tween *Midlemore and Goodale*, upon a Demurrer admitted and agreed per Curiam, but Judgment was given against the Plaintiff for another Cauſe. and Exception was taken, that the Action was brought as Aſſignee of Aſſignee of the Covenantee, and ſhews that the Conveyance was made to the Plaintiff, and Frances his Wife, and to the Heirs of the Husband, and that he brings the Action alone, without naming his Wife, who is yet alive, and ſo not good, whereupon (abſente Brampſton) it was adjudged for the Defendant. —— Jo 406. pl. 4 S. C. & S. P. held accordingly. ——— By Action brought by the Aſſignee attaches it ſo in his Perſon that the Covenantee cannot releaſe it, he being intereſted in it ; though before any Breach or Suit commenced a Releaſe by him had been a good Bar to the Aſſignee from bringing the Action. Cro. C. 503. S. C. per tot. Cur. ——— S. C. & S. P. cited Arg. Skinn. 257.

7. None ſhall have Advantage of *Warranty Real* but he who is Tertenant ; contra of Warranty *Perſonal*, as by Writ of Covenant ; Note the Diverſity. Br. Covenant, pl. 1. cites 26 H. 8. 3. per Cur.

8. Where Covenant is made *to one and his Aſſigns*, and where *Leſſee for Years leaſes over* his Term, the ſecond Leſſee, if he be ouſted, ſhall have Action of Covenant againſt the Leſſor. Thel. Dig. 18. Lib. 1. cap. 21. S. 4 cites F. N. B. Tit. Covenant. F. N. B. 145. (M) S. P. accordingly, if the Leaſe be made to the firſt Leſſee and his Aſſignees *with Warranty*.

9. Where a Man *leaſes Land Habendum to the Leſſee and his Aſſigns for 20 Years*, the Aſſignee ſhall have Action of Covenant againſt the Leſſor, by reaſon of the Word (Aſſigns) in the Deed of the Leaſe ; and it was ſaid there, that the Aſſignee of the Leaſe brought Writ of Covenant againſt the Leſſor where no Aſſigns were expreſſed in the Deed. Hill. 48 E. 3. and lay well ; but this Caſe is not in the Printed Report. Br. Covenant, pl. 45. cites F. N. B.

10. *B. covenanted, that if R. pay 400 l. to him or his Aſſigns before ſuch a Day, he would ſtand ſeiſed to his Uſe in Fee. Before the Day B. infeoffed one W. of the Land, at which Day the Money was tendered to W.* Adjudged that it was due to him as Aſſignee of the Land, and not to B. who was the Covenantor. Cited by Coke. Mo. 243. pl. 382. as 14 Eliz. in the Court of Wards. Randall v. Barker.

11. A Man made a *Feoffment in Fee, reſerving Rent, Suit of Court, and Relief*, and by the Deed *granted, that if the Feoffee, his Heirs and Aſſigns, ſhould be diſtrained for other Services* than are reſerved in the Deed, that then *it ſhould be lawful for the Feoffee, his Heirs and Aſſigns, to diſtrain in his Manor of D.* and keep the Diſtreſs till he was ſatisfied of ſo much as he had ſuſtained in Damage by the Diſtreſs. The Feoffee made a Feoffment over. It was reſolved, that in ſuch Caſe the *ſecond Feoffee might diſtrain*, becauſe it was a Covenant which ran with the Lands ; and if the Word (Aſſigns) had not been in, yet *the Word (Heirs) would warrant the Aſſignee to diſtrain* ; Per Periam J. Mo. 179. pl. 318. Mich. 24 Eliz. Anon. Mo. 185. pl. 331. Allen v. Givers, S. C. Mich. 26 Eliz. and S. P. held per Cur. accordngly, but for Defaults in the Avowry they gave Judgment for the Plaintiff to have a Return of the Beaſts.

12. It was reſolved, that the *Aſſignee of an Aſſignee* ſhall have an Action of Covenant ; ſo the *Executors of an Aſſignee of an Aſſignee* ; *ſo the Aſſignees of the Executors or Adminiſtrators of every Aſſignee* ; for all theſe are within the Word Aſſigns, for the ſame Right which was in the Teſtator or Inteſtate ſhall go to his Execctors or Adminiſtrators. 5 Rep. 17. b. Paſch. 25 Eliz. B. R. the 7th Reſolution, in Spencer's Caſe.

13. If a Man makes a *Leaſe for Years by the Word Conceſſi*, or *Dimiſi*, which imply a Covenant, *if the Aſſignee of the Leſſee be evicted, he ſhall have a Writ of Covenant* ; for the Leſſee and his Aſſignee have the annual Profits of the Land which accrue for the annual Rent, and in as much as the Aſſignee applies his Labour, and employs his Coſt upon the

Land, and is evicted, whereby he loſes all, it is Reaſon that he ſhould take as much Benefit of the Demiſe and Grant as the firſt Leſſee might, and the Leſſor has no other Prejudice than what his ſpecial Contract with the firſt Leſſee had bound him to. 5 Rep. 17. a. Paſch. 25 Eliz. B. R. the 4th Reſolution in Spencer's Caſe.

* Le. 62. pl. 82, S. C. held accordingly, per tot. Cur.

14. A. leaſed to B. for Years. B. covenanted that it ſhould be lawful for A. his Heirs and Aſſigns to enter, and ſee in what Reparations the Houſes were, and *that he and his Aſſigns, within one Month after Notice, would repair.* The Houſes afterwards fell into Decay, and A. granted the Reverſion over to C. for Life * [in Fee, who upon View gave Warning.] C. as Aſſignee of A. brought Covenant; it was ſaid the Action did not lie, becauſe the Houſe became ruinous before his Intereſt in the Reverſion; but Anderſon and others e contra; becauſe the Covenant is, that after Notice he would repair, and therefore be the Houſe ruinous when it will, and in whoſe Time ſoever, yet if he does not repair upon Notice, he breaks the Covenant. Mo. 242. pl. 380. Mich. 29 Eliz. Maſcall's Caſe.

Mo. 243. pl. 382 Purfrey's Caſe, S. C. argued, but not reſolved.

15. A Man was *poſſeſſed for the Term of 6 Years of a Tavern* in London, and *leaſed the ſame* unto another *for 3 Years*, and *it was covenanted betwixt them, that during the 3 Years quolibet menſe*, Monthly, the *Leſſee ſhould give an Account to the Leſſor of the Wine which he ſold, and* ſhould *pay unto him for every Tun ſold ſo much* Money; and afterwards the *Leſſor granted the 3 Years which were remaining of the 6 Years to another*, and he did requeſt the Leſſee to Account, and he would not, whereupon he brought an Action of Covenant; and the Defendant pleaded, that he had accounted to the Aſſignee of the 3 Years, and upon that there was a Demurrer joined; and the better Opinion of the Court was, that it was no Plea, becauſe *it was not a Covenant which did go with the Land, or the Reverſion, but was a collateral Thing, and did not paſs by the Aſſignment of the 3 Years.* Godb. 120. pl. 140. Hill. 29 Eliz. B. R. Anon.

Cro. E. 436, 437. pl. 52. Mich 37 & 38 Eliz. B. R. Noke v. Auder, S. C. and by Popham and Fenner,

16. *Leſſee for Years aſſigned* over his Term *by Deed to J. S. and covenanted that J. S. and his Aſſigns ſhould enjoy* the Land during the Term without Interruption of any. Afterwards *J. S. aſſigned over his Term by Parol*, and the *Aſſignee being diſturbed brought Covenant.* Adjudged that it lies, although the Aſſignment was but by Parol, becauſe there was Privity of Eſtate. Mo. 419. pl. 577. Hill. 33 Eliz. Awder v. Nokes.

when the Eſtate paſſes, though it be by Parol, the Warranty and Covenant enſues it, and the Aſſignee of the Eſtate ſhall have the Benefit thereof; and Coke Attorney General, who was of Counſel with Defendant, ſaid, that the Law was clearly ſo. —— S. C. cited 3 Rep. 63. a. as reſolved accordingly, Paſch. 59 Eliz. B. R. in Error on a Judgment in C. B. per Popham and the whole Court, and upon Conference had with divers other Juſtices.

17. Where a *Covenant is annexed to a Thing, which* of its Nature *cannot paſs without Deed* at firſt, in ſuch Caſe the *Aſſignee* ought to be in by Deed, otherwiſe he ſhall not have Advantage of the Covenant; *but* where the Covenant is not ſo, but *runs with the Eſtate*, the Aſſignee ſhall have Covenant without ſhewing any Deed of Aſſignment. Cro. E. 373. pl. 21. and 436. pl. 52. Hill. 37 & 38 Eliz. B. R. Noke v. Awder.

Mo. 419. pl. 577. Awder v. Noke, S. C. & S. P. accordingly.

18. Aſſignee of a Leaſe by Eſtoppel ſhall not have Advantage of any Covenant. Reſolved by all the Juſtices. Cro. E. 437. Mich. 37 & 38 Eliz. B. R. in Caſe of Noke v. Awder.

Mo. 527. pl. 695. Mathuris v. Weſtroray, S. C. adjudged ac-

19. The Aſſignee of the Reverſion of a Term ſhall take Advantage of a Covenant againſt the Leſſee of a Term; As if the *ſecond Leſſee covenants to leave the Poſſeſſion peaceably to the Leſſor, his Executors or Aſſigns, or to leave the Premiſſes in good Repair* &c. and though it was objected that the Covenant was not broken until the Term was determined, yet per Cur.

Cur. *this is a Covenant that runs with the Land, and broken inſtantly with the Determination of the Eſtate,* but becauſe he did *not aver, that he had the Reverſion at the Time of the Grant,* it was holden to be an apparent Fault, and for that Cauſe Judgment was for the Defendant. Cro. E. 599, 600. pl. 6. Hill. 40 Eliz. B. R. Matures v. Weſtwood.

cordingly.—A Covenant *to do* a thing *at the Inſtant of the Determination of the Term,* as to leave peaceable Poſſeſſion to the Leſſor, his Executors, Adminiſtrators or Aſſigns, is a Covenant annexed to the Eſtate, and runs with the Land, and therefore the Aſſignee ſhall have Advantage over it; Per Gawdy J. but Fenner J. e contra, for that the Eſtate is determined, and ſo no Reverſion, and ſo Defendant now is but Tenant at Sufferance. Goldsb. 176. Matures v. Weſtwood.

20. A. ſeiſed of Lands in Fee made a *Leaſe for Life,* the *Remainder for Life rendring Rent, and* after *acknowledged a Statute, and afterwards bargained and ſold the Reverſion and covenanted with the Bargainee, his Heirs and Aſſigns, that it ſhould be diſcharged within two Years of all Statutes and Incumbrances, excepting the Eſtates for Life;* the *Statute is extended, and thereupon the Rent and Reverſion is extended;* the Bargainee grants the Reverſion to the Plaintiff who brought Covenant; reſolved becauſe the Covenant was broken before the Plaintiff's Purchaſe, that the Action was not maintainable by him againſt the Defendant. Cro. E. 863. pl. 40. Mich. 43 & 44 Eliz. Lewes v. Ridge.

21. If *Leſſee covenants to do any Thing upon the Land as to build or repair a Houſe,* there a Covenant will lie for the Aſſignee by the Common Law; but if it do not by the Common Law, yet it is clear that it will lie by the Statute 32 H. 8. Reſolv'd. Ow. 151. Mich. 8 Jac. in Caſe of Alſo v. Henning.

22. If *Leſſee for Years covenants to repair and ſuſtain the Houſes in as good Plight as they were at the Time of the Leaſe made; and afterwards,* the Leſſee *aſſigns over his Term, and the Leſſor his Reverſion;* the Aſſignee of the Reverſion ſhall maintain an Action of Covenant for the Breach of the Covenants againſt the firſt Leſſee; Per Doderidge J. and Mountague Ch. J. againſt the Opinion of Haughton J. Godb. 270, 271. pl. 378. Hill. 15 Jac. B. R. Anon.

23. In Debt for Rent, and ſhewed that *B. by Indenture leaſed to J. S. for* 200 *Years rendring Rent at Michaelmas, and afterwards conveyed the Reverſion to the Plaintiff who for Rent behind brought the Action againſt the Aſſignee of J. S. who* confeſſed the Leaſe, but *ſaid, that B. covenanted for him, his Heirs and Aſſigns with J. S. his Executors and Aſſigns, that if he be diſturbed for Reſpite of Homage, or be forced to pay any Charge, or Iſſues loſt, that he ſhould retain* ſo much of his Rent, as he ſhould be enforced to pay; And, that by force of a Writ iſſuing out of the Exchequer for Reſpite of Homage and Iſſues loſt, ſo much was levied by the Sheriff, which he hath retained of his ſaid Rent. Reſolved, that the Aſſignee ſhall have Benefit of the Covenant, both by the Common Law and by the Statute 32 H. 8. for that *it was a Covenant which did run with the Land;* and at the Common Law he might have taken Advantage to retain the Rent reſerved upon the Leaſe, for it may be appointed to ceaſe at the Will of the Parties. Cro. C. 137. pl. 11. Mich. 4 Car. B. R. Bayly v. Hughes.

Jo. 242. pl. 7. Paſch. 7 Car. S. P. and ſeems to be S. C. though ſomewhat differently ſtated, and the Court held, that *if the Charge was lawful,* then the Defendant might retain his Rent, and he might well plead it in Bar of the Action, but it appearing that the Charge for reſpite of Homage was not good, and the Covenant did not extend in Law but to a legal Charge, therefore Judgment was given for the Defendant; but ſays, that Crooke ſaid nothing, but ſeemed to be e contra.

24. *A. leaſed Land to J. S. for* 21 *Years reſerving a Rent, and likewiſe a groſs Sum by Way of Fine* payable after the Death of W. R. *Proviſo that for default of Payment A. might re-enter. A. levied a Fine and aſſign'd the Reverſion to B.* adjudg'd, that this Caſe is not within the Statute 32 H. 8. and the Condition of Entry not transferr'd over by transferring over the Reverſion; For a Man cannot by his own Act divide a Condi-

tion

tion which goes in Deſtruction of an Eſtate. Sty. 316, 317. Hill. 1651. B. R. Dekins v. Latham.

Sid. 157. pl. 8. Kitchen v. Compton. S. C. adjudged.

25. As Aſſignee of Leſſee ſhall be charged in Covenant for Repairs (though the Aſſignes are not nam'd in the Covenant) in reſpect of his having the Poſſeſſion according to 5 Rep. Spencer's Caſe, ſo the *Aſſignee of the Reverſion ſhall have Action of Covenant for Default of Repairs* in reſpect of his having the Reverſion, *though* Aſſignees are *not named in the Covenant*; Arg. to which all the Court agreed. Lev. 109. Mich. 14 Car. 2. B. R. in Caſe of Kitchen v. Buckley.

2 Show. 133. pl. 113. S. C. adjornatur.

26. *Covenant by B. an Aſſignee of a Reverſion againſt M. and N. two Leſſees*, upon a Leaſe for Years, *rendring 70 l. per Ann. Rent, which they for themſelves, and for their Executors, Adminiſtrators and Aſſigns, covenanted to pay to the Leſſor, his Heirs or Aſſigns*, according to the Reſervation; and *for Rent* Arrear, and *incurred after the Aſſignment*, B. brings Covenant. M. Nil dicit. N. the other Defendant *pleaded in Bar, that before the Aſſignment to the Plaintiff he by the Conſent of the Leſſor, releaſed to M. and that the Leſſor accepted him as his ſole Tenant, and that he paid the Rent to him, which the Leſſor accepted as of his Tenant*; and upon Demurrer it was objected, that the Covenant enſuing the Rent, a Diſcharge of the Rent is a Diſcharge of the Covenant. But on the other Side was cited the Caſe of Brett and Cumberland, that no Act of the Leſſee can diſcharge himſelf, or his Executors of a ſpecial Covenant, of which alſo the Aſſignee of the Reverſion ſhall have Benefit by the Statute 32 H. 8. and Judgment for the Plaintiff accordingly. 2 Jo. 144. Paſch. 33 Car. 2. B. R. Aſhurſt v. Mingy.

(K. 2) Who ſhall take Advantage of a Covenant. Perſons coming in by Act in Law, or not named.

1. *Executors ſhall have a Writ of Covenant of a Covenant made unto their Teſtators for a Perſonal Thing.* And it appears by the Regiſter he may ſue a Plaint of Covenant in the County, or in the Hundred-Court &c. and that he ſhall have a Recordare to the Sheriff for to remove the ſame out of the County into C. B. as it ſhall be done in a Replevin ſued there; and if the Plaint of Covenant be ſued in the Hundred, or in other Court of other Lord, he ſhall have an Accedas ad Curiam directed unto the Sheriff to remove the Plaint into C. B. F. N. B. (D)

2. If a Man *demiſe* or grant *to a Woman for Years*, and the *Leſſor covenants* with the Leſſee *to repair* the Houſes *during the Term*, the *Feme takes Husband and dies*, the Baron ſhall have an Action of Covenant as well upon the Covenant in Law upon theſe Words, Demiſe or Grant, as upon the expreſs Covenant. 5 Rep. 17. a. per Cur. Paſch. 25 Eliz. B. R. in the 5th Reſolution in Spencer's Caſe.

3. *So* it is of a *Tenant by Statute Merchant, or Statute Staple, or Elegit of a Term, and he to whom a Leaſe for Years is ſold by Force of an Execution*, ſhall have an Action of Covenant in ſuch Caſe, as a Thing annexed to the Land, although that they come to the Term by Act in Law. 5 Rep. 17. a. per Cur. Paſch. 25 Eliz. B. R. in the 5th Reſolution in Spencer's Caſe.

4. *As if a Man grant to a Leſſee for Years that he ſhall have ſo much Eſtovers as will ſerve to repair his Houſe, or* that he *ſhall burn within his Houſe*, this is appurtenant to, and ſhall run with the Land into whoſe Hands ſoever that the Lands ſhall come. 5 Rep. 17. a. b. per Cur. obiter.

Obiter. Paſch. 25 Eliz. B. R. in the 5th Reſolution in Spencer's Caſe.

5. Leſſee covenanted with the Leſſor, his Executors and Adminiſtrators, *to repair, and leave in Repair*, at the End of the Term. In Covenant brought by the Heir it was objected, that it lay not for him; but it was anſwered, that it is a *Covenant running with the Land*, and ſhall go to the Heir though not named. Beſides, it appears that the *Intent was, that it ſhould continue after the Death of the Leſſor*, it being with him, his * Executors and Adminiſtrators, and therefore ſhall not determine by his Death, upon which Judgment was given in the Exchequer for the Plaintiff. 2 Lev. 92. Mich. 25 Car. 2 B. R. Lougher v. Williams.

2 Lev. 13. ſame Reaſon for continuance of Rent; Sacheveral v. Frogat

6. *Ceſty que que Uſe of a Rent-charge* executed by the Statute cannot bring Action upon a *collateral Covenant*, for that remains with the Feoffee &c. though Ceſty que Uſe may diſtrain as incident to the Eſtate to be executed in him. 2 Mod. 138. Mich. 28 Car. 2. C. B. Cook v. Herle.

Mod. 223. pl. 12. Baſcawen and Herle v. Cooke. S. C. adjudged.

7. *But* of Covenants *running with the* Land he may take Advantage; Arg. 3 Le. 225. in the Caſe of **Scot v. Scot** ſayes the Statute 32 H. 8. has been ſo expounded before.

8. A *Biſhop granted a Leaſe to J. S. who covenanted with the Biſhop and his Succeſſors*, to repair and leave repair'd at the End of the Term; the Biſhop died, and the *Leaſe expired in his Succeſſor's Time, and the Repairs not done*; The *Succeſſor died*, and the Executor of the Succeſſor brought Action of Covenant, and adjudged that it lay for him. 2 Vent. 56. Trin. 1 W. & M. in C. B. Morley v. Polhill.

3 Salk. 109. pl. 10. S. P. as to the Executors of the Biſhop by whom the Leaſe was made, and adjudg'd the Action well brought by them.

9. *Leſſor covenanted to renew* the Leaſe *at the Requeſt of the Leſſee* within the Term. The Leſſee died within the Term, having laid out a conſiderable Sum of Money in improving the Premiſſes, and the *Executors of Leſſee requeſted a new Leaſe* within the Term. It was objected that the Executors might be inſolvent Perſons, and ſo the Leſſor in danger of loſing his Rent. Ld. C. Macclesfield ſaid, that the Meaning of this Covenant was, that the Leſſee might be reimburſed what he had laid out in Improvements, and therefore immaterial whether the Leſſee or his Executors require the Renewal; And that there is to be a Clauſe of Re-entry in the Leaſe, and the *Value of the Premiſſes being doubled by the Improvements of the original Leſſee*, ſuch Clauſe will ſecure the Landlord againſt any inſolvency of the Tenant, and therefore ordered Defendant the Leſſor to pay *Coſts* in this Court, and at Law for an Ejectment brought againſt the Plaintiff, and in which he had recovered Judgment. 2 Wm's. Rep. 196. Mich. 1723. Hyde v. Skinner.

(K. 3) Who ſhall take Advantage of a Covenant, and againſt whom.

By Statute 32 H. 8. cap. 34.

1. 32 *H.* 8. *cap.* 34. *WHEREAS diverſe had leaſed Manors &c. and other Hereditaments for Life or Lives or Years by Writing, containing certain Conditions, Covenants, and Agreements, as well on the Part of the Leſſees and Grantees their Executors and Aſſigns, as on the Part of the Leſſors and Grantors, their Heirs and Succeſſors;*

And whereas by the common Law, no Stranger to any Condition or Covenant could take Advantage thereof, by Reaſon whereof all Grantees of Re-

Reſolutions and Judgment upon the Statute 32 H. 8. cap. 34.

1. That the ſaid Statute is gene-

ral, viz. that the *Grantee of the Reverſion of every common Perſon as well as of the King ſhall ſhall take Advantage* of Conditions.

2 The Statute *extends to Grants made by the Succeſſors of the King*, tho' the King be only named to the Act.

verſions and all Grantees and Patentees of the King of Abbey-Lands, could have no Entry or Action for any Breach &c.

It is enacted that all Perſons, Bodies Politick, their Heirs, Succeſſors, and Aſſignes which have or ſhall have any Grant of our ſaid Lord the King, of any Lordſhip &c. Rents, Tithes, Portions, or other Hereditaments, or any Reverſion thereof which belonged to the Monaſteries &c. or which belonged to any other Perſon &c. and alſo to all other Perſons being Grantees or Aſſignees to or by our ſaid Lord the King, or to or by any other Perſon or Perſons, and the Heirs, Executors, Succeſſors and Aſſigns of every of them ſhall and may have like Advantage by Entry for Nonpayment of Rent, or for doing Waſte or other Forfeiture, and the ſame Remedy by Action only for not performing other Conditions. Covenants and Agreements contained in the ſaid Leaſes, againſt the Leſſees and Grantees their Executors Adminiſtrators and Aſſignes as the Leſſors aad Granters, their Heirs or Succeſſors ought, ſhould or might, have had at any time or times &c.

3. Where the Statute ſpeaks of *Leſſees*, that the ſame *does not extend to Gifts in Tail.*

4. Where the Statute ſpeaks of *Grantees and Aſſignees of the Reverſion* an *Aſſignee of part of the State of Reverſion may take Advantage* of the Condition. *As if* Leſſee for Life be, &c. and the Reverſion is granted for Life &c. So if Leſſee for Years &c. be, and the Reverſion is granted for Years, the Grantee for Years ſhall take benefit of the Condition in reſpect of the Word (Executors) in the Act.

5. *A Grantee of part of the Reverſion* ſhall not take Advantage of the Condition. *As if* the Leaſe be of three Acres reſerving a Rent upon Condition, and the Reverſion is granted of two Acres, the Rent ſhall be apportioned by the act of the Parties, but the Condition is deſtroyed, for that it is entire and againſt common Right.

6. *In the King's Caſe*, the *Condition* in that Caſe is *not deſtroyed, but remains ſtill in the King.*

7. *By act in Law a Condition may apportioned in the Caſe of a common Perſon; As if a* Leaſe for Years be made of two Acres, one of the Nature of Borough Engliſh, the other at the Common Law, and the Leſſor having Iſſue two Sons, dies; Each of them ſhall enter for the Condition broken, and a Condition may be apportioned by the act and wrong of the Leſſee.

8. If a Leaſe for Life be made *reſerving a Rent upon Condition &c.* and the Leſſor levies a Fine of the Reverſion, he is Grantee or Aſſignee of the Reverſion, but without Attornment he ſhall not take Advantage of the Condition; for the makers of the Statute intended to have all neceſſary Incidents obſerved, otherwiſe it might be miſchievous to the Leſſee.

9. There is a *Diverſity* between a Condition that is *compulſary*, and a *power of Revocation that is voluntary*; For a Man that has power of Revoeation, may by his own Act extinguiſh his power of Revocation in part, as by levying of a Fine of part, and yet the Power ſhall remain for the Reſidue. Becauſe it is in Nature of a Limitation, and not of a Condition; and ſo it was reſolv'd in the Earl of Shrewsbury's Caſe. Dyer 39.

10. If the *Leſſor bargains and ſells the Reverſion by Deed indented and inrolled*, the Bargainnee is not in en le Per by the Bargainor, and yet he is an Aſſignee within the Statute. So if the *Leſſor grants the Reverſion in Fee to the uſe of A. and his Heirs*, A. is a ſufficient Aſſignee within the Statute; Becauſe he comes in by the act and limitation of the Party, albeit he is in the Poſt, and the words of the Statute be *To* or *By*, and they are Aſſignees to him, tho' they are not by him. But ſuch as *come in meerly by an act in Law*, As the Lord of the *Villein*, the Lord by *Eſcheat*, the Lord that enters or claims for *Mortmain* or the like, ſhall not take Benefit of this Statute.

11. If the *Leſſor*, in the Caſe before, *bargains and ſells the Reverſion by Deed indented and inrolled*, or if the Leſſor *makes a Feofment in Fee*, and the *Leſſee re-enters*, the Grantee or Feoffee ſhall not take any Advantage of any Condition without making *Notice to the Leſſee.*

12. Albeit the whole Words of the Statute be, for non-payment of Rent, or for doing of Waſte, or other Forfeiture, yet the Grantees or Aſſignees ſhall not take Benefit of every Forfeiture by force of a Condition, but only of *ſuch Conditions as either are incident to the Reverſion, As Rent, or for the benefit of the State, As* for *not doing of Waſte*, for *keeping the Houſes in reparations*, for making of Fences, ſcowring of Ditches, for preſerving of Woods, or ſuch like, and *not for the payment of any Sum in groſs, delivery of Corn, Wood*, or the like, ſo as (*other Forfeiture*) ſhall be taken as other Forfeitures, like to thoſe Examples which were there put, viz of payment of Rent, and not doing of Waſte, which are for the benefit of the Reverſion. Co. Litt. 215. a. b.

This Act extends not to Grants of *Eſtates in Fee* or in Tail, but only to Leaſes for Life or Years. Cro. E. 863. pl. 40. Mich. 42 & 43 Eliz. C. B. Lewis v. Ridge.——Extends not to a *Nomine Pœnæ*. Co. Litt. 162. b.

2. If *Leſſee for Years of* 20 *Acres grants his Intereſt of* 10 *Acres*, this was Apportionment *at Common Law*, and the Leſſor ſhall have *ſeveral Avowries* and ſeveral *Actions of Debt*; for in this Caſe no *Meſnalty* was created as was at Common Law, but Very Lord and Very Tenant,

and

and for this *Miſchief* the Statute was made; For if the Tenant before the Statute had made a Feoffment of divers Parcels, to hold by an Halfpenny or ſuch little Thing, then the *Lord ſhould know the Ward but of this Moiety* &c. Per Plowden. Mo. 93. pl. 230. Paſch. 12 Eliz. Anon.

3. A *Leaſe* was made for 30 Years, and Leſſor *covenanted to repair* the Houſe, and to do other Things. The *Leſſee granted parcel of the Term* for ten Years; It was holden that *his Grantee ſhould not have an Action of Covenant*, by the Statute of 32 H. 8. of Conditions, *for he is not Tenant to the firſt Leſſor*; But if Leſſor grants his Reverſion for Years, his Grantee ſhall have Covenant or benefit of Condition with which the Leſſee is charged, for he is an Aſſignee within the Statute, becauſe the Leſſee holds of him; Per Plowden, Nichols and Chambers, but Ipeſley e contra ſtrongly. Mo. 93. pl. 230. Paſch. 12 Eliz. Anon.

4. A *Leaſe of three Manors*, rendering for one 6 l. for another 5 l. for the third 10 l. with *Condition of re-entry* for Non-payment, the *Leſſor granted the Reverſion of one Meſſuage*, and the *Leſſee attorned*; after the *Leſſor bargained and ſold the Reverſion of all* and the *Leſſee attorned*, and Rent in one Manor is behind. It ſeemed to ſeveral that the Bargainee of the Reverſion is aided by the Words (to or by the Leſſor &c.) for this is the Intent of the Law &c. and within Statute 32 H. 8. to take Advantage of a Condition; They all but Mounſon, held that the Aſſignee ought to be of the intire Reverſion, as it was in the Leſſor himſelf, and not of part of the Reverſion, nor the Grant of it of leſs Eſtate than was in the Leſſor himſelf at the Time of the making the Condition, and upon that adjudged not; and holden that the Reverſion within 32 H. 8. ought to be expectant upon a Term or Frank-tenement, and not upon Tail. Dy. 308. b. 309. a. pl. 75. Paſch. 14 Eliz. Winter's Caſe. Mo. 97, 98. pl. 241, Appowell v. Moneux. S. P. held accordingly and ſeems to be S. C. The Court held that an Aſſignee of Part of a Reverſion may take Advantage of the Condition or Covenant, ſ. that he is Part of it.

Reverſion of all the Thing demiſed. And Coke Ch. J. ſaid, that the Opinion of Mounſon 14 309. a. was good Law Ow. 152 Mich. 8 Jac. in Caſe of Alſo v. Hemming.——Godb. in pl. 227. Warburton J. cited D. 209. Winter's Caſe, that he that brings Action upon the Statute ought to have the whole Reverſion. But Coke Ch. J. and Foſter ſaid, that he need not; For it had been adjudg'd, that if the Reverſion be granted in Tail, the Grantee ſhall take Advantage of this Statute, and ſhall enter for the Condition broken.——S. C. cited 2 Bulſt 282. and Coke Ch. J. ſaid, it is as common as may be, that an Aſſignee of a Reverſion for part ſhall have Benefit of a Covenant, and that ſo it is in the Caſe of Will v. Grange, in Pl. C.

5. If Tenant for Life be diſſeiſed and *Reverſioner confirms the Eſtate of Diſſeiſor*, and the Tenant for Life re-enters, the Diſſeiſor is now an Aſſignee, but otherwiſe it is, if Reverſioner *releaſes* to Diſſeiſor. Per Manwood. 4 Le. 29. in Caſe of Lee v. Arnold.

6. A. *ſeiſed of Copyhold Lands, part Borough Engliſh and part at Common Law, by Licence* of the Lord *leaſes them on Condition and dies* within the Term, leaving two Sons, *the youngeſt purchaſes the Reverſion* of the Lands at Common Law of the eldeſt; for the one part as Heir in Borough Engliſh, and of the other as Aſſignee of his elder Brother he ſhall take Advantage of the Condition. Mo. 113, 114. pl. 254. Paſch. 20 Eliz. Anon.

7. *Aſſignee of an Aſſignee* ſhall have Action of Covenant; Reſolv'd. 5 Rep. 17. b. Paſch. 25 Eliz. B. R. the 7th Reſolution in Spencer's Caſe.

8. So of the *Executors of the Aſſignee of the Aſſignee.* Ibid.

9. So of the *Executors or Adminiſtrators of every Aſſignee*; for all are comprized within the Word (Aſſignees,) becauſe the ſame Right which was in the Teſtator or Inteſtate ſhall go to his Executors or Adminiſtrators. Ibid.

10. This

Covenant in a Leaſe by Leſſor *to renew the Term* on Payment of 10 l lies againſt the Aſſignee of the Reverſion. And. 82. pl. 148. Paſch. 22 Eliz. Ifleed v Stonely.——But a Covenant by Leſſor *to repair a Bridge on Land not in the Leaſe*, will not bind the Grantee of the Reverſion; and if ſuch Covenant was by the Leſſee, the Grantee of the Reverſion ſhall not take Advantage of them. Arg. And. 82.——So a Covenant by Leſſee of a Houſe for three Years *to account and pay for every Tun of Wine ſold in the Houſe ſo much* is Collateral and goes not with the Land, or the Reverſion by Aſſignment of the three Years. Godb. 120. pl. 140. Hill. 29 Eliz. B. R. Anon.

10. This Act *extends* to Covenants which concern the Thing demiſed, but *not to Collateral Covenants*, cited as Reſolv'd. 5 Rep. 18. a. Paſch. 25 Eliz. B. R. in Spencer's Caſe.

4 Le. 34. pl. 93. S. C. in totidem Verbis.

11. A. ſeiſed of a Manor leaſed the ſame for Years, rendring Rent with clauſe of Re-entry; A. levies a *Fine ſur Conuſance de Droit* to the Uſe of himſelf and his Heirs. The Rent being demanded is behind. The Queſtion was whether the *Conuſor* be *an Aſſignee* within the Statute 32 H. 8. 34. Manwood thought that *being Ceſty que uſe, who is in by Act in Law* he *might avow and re-enter* without Attornment, for that he is in by the Statute 27 H. 8. *But that if the Right had been in the Conuſee and he had died without Heir*, that *the Lord by Eſcheat might avow*, tho' the Conuſee himſelf could not. Harper J. held that the Heir might avow and re-enter without Attornment. Dyer J. held that Conuſor cannot enter or avow before Attornment, and is not Aſſignee within the Statute. 3 Le. 103, 104. pl. 152. Paſch. 26 Eliz. C. B. Anon.

12. He who is *in by a common Recovery* is not an Aſſignee, tho' the Recovery was to his Uſe, for the Writ diſaffirms his Poſſeſſion. Per Mounſon J. 4 Le. 29. pl. 82. Mich. 27 Eliz. C. B. in Caſe of Lee v. Arnold.

The Report is reflected upon by Serjeant Maynard, and ſaid, that there was no ſuch Reſolution. Mod. 192. but Ibid 193 the Court ſaid, that that Report in Lincoln College's Caſe, whether there was any Reſolution in the Caſe or not, is founded on ſo good Reaſon, that Conveyances ſince have gone according to it.

13. He who hath a *Reverſion by Limitation of an uſe or by a common Recovery* tho' he be in en le Poſt, yet he ſhall take Advantage of the Condition as an Aſſignee within the 32 H. 8. But the *Lord that comes to a Villein's Lands*, or a Lord *by Eſcheat cannot* take advantage of ſuch Condition; for they come to Land by reaſon of their Seigniory, which is a *Title Paramount*. 3 Rep. 62. b. per Cur. Mich. 37 & 38 Eliz. C. B. in Lincoln College's Caſe.

Cro. E 805. pl. 6 S. C. adjornatur. —— Ibid. 832. pl. 1. S. C. the Court held accordingly and reſolv'd to give Judgment for the Defendant, but other Matter being moved it was adjourn'd.

14. A *Leaſe* for Years was made *to A. rendering Rent with a Clauſe of Re-entry* for Non-payment; the *Reverſion was granted to C. who levied a Fine thereof to B. who before any Attornment granted the ſaid Reverſion to C.* his Son and Heir, *to whom A. attorned*; the Rent was in Arrear and C. enter'd; Reſolv'd, that the Entry was lawful by Virtue of the Statute 32 H. 8. of Conditions; for tho' the Statute is General, viz. (other Perſons being Grantees or Aſſignees, ſhall have like Advantages &c.) Grantee or Aſſignee by Fine ſhall not take Advantage without Attornment; for when a Statute ſpeaks of Aſſigns, it ſhall be intended ſuch compleat Aſſignees as have all the Ceremonies and Incidents requiſite by Law; yet here the Son was a compleat Aſſignee within the Statute, becauſe there was an actual Attornment made to him, and the Words viz. (as the Grantors or Leſſors might) are not to be intended of the immediate Grantor, but of any Grantor, before he can take any Benefit of the Condition. 5 Rep. 111. b. Paſch. 43 Eliz. B. R. Mallory's Caſe.

15. *Aſſignee not named* is *not bound by* collateral Covenants, As to build a Houſe De Novo; but though not named he is bound by Covenants that are for the Benefit of the Eſtate according to the Nature of the Soil, As to lay ſo many Acres every Year to Paſture. Cro. J. 125. pl. 11. Trin. 4 Jac. B. R. Cockſon v. Cock.

16. A. leaſed Land to B. for 7 Years, who *covenanted to pay the Rent to A. his Heirs and Aſſigns.* Afterwards *A. leaſed to C. for Life, and deviſed the Reverſion to D. for* 40 *Years if ſhe ſo long liv'd*; and B. attorned. The Court held, that D. the Aſſignee for 40 Years may have Covenant for Non-payment of the Rent. Ow. 151, 152. Mich. 8 Jac. B. R. Alſo v. Hemming.

2 Bulſt. 281. Attoe v. Hemmings, S. C. but ſtates it, that A. deviſed the Reverſion to C. his Wife for Life, who granted it over to D. if C. ſhall ſo long live. B. attorned; and adjudged that D. may have Covenant for the Rent. —— Roll Rep. 80. Athowe v. Leming, S. C. ſtates it as a Grant to C. for Life, and that B. attorned, and afterwards C. leaſed her Reverſion for 40 Years, if ſhe ſo long lived, to which B. attorn'd. Adjudged accordingly.

17. *Leaſe to Husband and Wife*; Husband dies; The Wife accepts the Land; ſhe ſhall not be charged with collateral Covenants though ſhe *agrees to the Eſtate*, becauſe they don't depend on the Eſtate; Arg. 2 Brownl. 136. Mich. 9 Jac. C. B. in Caſe of Bagnall v. Tucker.

18. *Copyhold Land* is not within the 32 H. 8. *For the Aſſignee* is not in by the Copyholder, nor is privy to the Leaſe made by him, but *is in only by the Cuſtom, and may plead his Eſtate immediately under the Lord*, per tot. Cur. on the firſt Opening. Yelv. 222. Trin. 10 Jac. B. R. Braſier v. Beale.

Cro. J. 305. pl. 7. Beal v. Braſier, S. C. and Williams and Fenner (abſente Fleming) ruled that he could not, neither by the Common Law, nor by the Statute, and Judgment accordingly for the Defendant. —— Brownl. 149. S. C. per tot. Cur. —— Co. Comp. Cop. 87. S. 21. cites S. C. accordingly.

19. *Grantee for Years of the Reverſion* ſhall take Advantage of a Condition within the Statute 33 H. 8. cited by Coke Ch. J. 2 Bulſt. 282. Mich. 12 Jac. as adjudg'd in C. B. in **Leonard's Caſe**, and ſaid that it is very plain and clear that ſuch Grantee may have an Action of Covenant at the Common Law, and that the old Difference was between a Covenant Perſonal and Real.

Godb. 162. in pl. 227. Coke Ch. J. cites S. C. as a Caſe in Ld. Dyer's Time, that *Leſſee for Years leaſed over Part of the Term upon Condition*, (which is ſo much as a Covenant) *and afterwards granted the Reverſion*, and it was ruled, that the Grantee might enter for the Condition broken, and the Reaſon (as he ſaid he remembered) was, becauſe (Executors) are named in the Statute; but ſaid, he would not charge his Memory with the Reaſon, but ſaid, that he was well aſſured that the Caſe was ruled as he had ſaid. —— And ibid. in the principal Caſe there, Paſch. 8 Jac. C. B. **Briſtow v. Briſtow**, S. P. was held by Coke and Foſter accordingly, but Warburton J doubted.

20. A *Leſſee for Years covenants* for himſelf, his Executors and Aſſigns, *that he would not erect any Building* in the Garden demis'd to the Prejudice of the Plaintiff's Light &c. The Leſſee aſſign'd, and his *Aſſignee erected an Houſe in the Garden to the Prejudice of the Plaintiff's Light* &c. In Covenant for this againſt the *Executor of the Leſſee*, he *pleaded that the Leſſee had aſſign'd to J. S. who entred and paid his Rent to the Plaintiff, and that the Plaintiff accepted him* for his Tenant &c. On Demurrer &c. Per Cur. the Action lies, and that here being an expreſs Covenant, it ſhall bind him and his Executors, and *no Aſſignment or Acceptance of the Rent from the Aſſignee ſhall take from him the Advantage of ſuing him or his Executors upon expreſs Covenant*, no more than if a Leſſee had obliged himſelf in an Obligation to pay his Rent, his Aſſignment over of his Term, and the Acceptance of the Rent by the Leſſor of the Aſſignee ſhall not take from him the Advantage of the Obligation. Cro. C. 188. pl. 8. Paſch. 6 Car. B. R. Bachelor v. Gage Executor of Gage.

Jo. 223. pl. 3. S. C. adjudged; *But if it was a collateral Covenant* the Action *would lie only againſt the firſt Leſſee.* —— S. C. cited Saund. 240.

Sid. 401. pl. 8. S. C. and held that the Action is well brought. —— Vent. 10 Nurſtie v. Hall, S. C. adjourned. —— 2 Keb. 439. pl. 93. and 448. pl. 16. and 468. pl. 55. S. C. adjornatur.

21. The Earl of Lincoln makes a *Leaſe of Lands in Lincolnſhire at London, rendring Rent, which the Tenant covenants to pay*; the Earl *aſſigns the Reverſion to Thursby, who for Non-payment of the Rent brings an Action at London.* The Defendant pleaded a Surrender, and thereupon iſſue; Reſolved, that Debt is maintainable only upon the Privity of Eſtate, and goes with the Reverſion at Common Law, and the Aſſignee might have maintain'd it before the Statute; but Covenant did not go to the Aſſignee before the Statute, becauſe it went only in Privity of Contract, and now, though by the Statute, the Covenant doth paſs to the Aſſignee, yet the Nature of it is not altered by the Statute, but it is aſſignable only as a Contract, and therefore may be brought where the Contract was made. 1 Lev. 259, 260. Hill. 20 & 21 Car. 2. B. R. Thursby v. Plant.

But ibid. 492. pl. 44. adjudged for the Plaintiff Niſi. —— Saund. 237. S. C. adjudged for the Plaintiff. But upon Error brought in the Exchequer Chamber the Juſtices and Barons were of diverſe Opinions Prima Facie, whereupon the Matter was compounded, and ſo not determined in Cam. Scacc.

22. Condition that *Leſſee ſhall not aſſign over to any but his Kindred.* Leſſor aſſigns over the Reverſion, and Leſſee aſſigns over his Term, and breaks the Condition; Quære, if this be a Condition within 32 H. 8. 34. or a collateral Condition? Atkins J. thought it a Condition within the Statute 32 H. 8. cap. 34. but others thought it a collateral Condition, & Adjornatur. Raym. 250. Hill. 30 & 31 Car. 2. C. B. Lucas v. How.

3 Lev. 264. 265. Dowſe v. Earle, S. C. accordingly.

23. *Deviſe of the Reverſion of a Term for* 1000 *Years to A. for Life*, and if he died within the Term, then *to his firſt Son* &c. A. may bring Covenant; For the Deviſe of the Term to him paſſed the whole Eſtate, and the Remainder to the Son was a Poſſibility and an executory Deviſe. 2 Vent. 128. Hill. 1 & 2 W. & M. in C. B. in Caſe of Dowſe v. Cale, and cites 8 Rep. 96. Manning's Caſe, and 10 Rep. Lampet's Caſe.

24. *At the Common Law an Aſſignee of a Reverſion might have* maintained an Action of *Covenant for any thing agreed to be done upon the Land itſelf*; Privity of Contract is not thereby transferred ſo as to make the *Action* tranſitory, but it *muſt be brought upon the Privity of Eſtate*; for if a Man does covenant to do any collateral Thing not in the Demiſe, and the Word *Aſſigns* is in the Deed, yet they *are not bound if they have no Eſtate, ſo that it is not the naming of them, but by Reaſon of the Eſtate in the Land they are made chargeable*; Per Cur. 3 Mod. 388. Hill. 2 W. 3. B. R. in Caſe of Barker v. Damer.

4 Mod. 80. S. C. adjudged accordingly. —— Skinn. 296. S. C. ſays, that at firſt Holt Ch. J. inclin'd againſt the Plaintiff; ſed adjornatur.

25. A *Copyholder makes a Leaſe*; the *Leſſee covenants to repair*; the *Copyholder ſurrenders to the Uſe of A. who is admitted*; the *Leſſee aſſigns his Term.* A. may bring Covenant againſt the Aſſignee for not repairing, for that he is within the 32 H. 8. cap. 34. as much as any Thing can be within the Equity of the Statute; Per Holt Ch. J. Show. 284. 288. and Judgment accordingly. Mich. 3 W. & M. Glover v. Cope.

Ibid. 305. S. C. adjudged for the Plaintiff. —— Carth. 205. S. C. adjudged after two ſolemn Arguments for the Plaintiff. —— 1 Salk. 185. pl. 2. S. C. adjudged accordingly. —— Comb. 185, 186. adjudged accordingly.

(L) *Who* shall be *bound* by it *without naming*. The *Assignee*.

1. IF a Man leases for Years, and the Lessee covenants in this Manner; Proviso semper, & præd' J. the Lessee doth covenant, that he will repair, maintain and sustain the Houses upon the Premisses, ad omnia Tempora necessaria, during all the said Term; and after the Lessee assigns over the Term, the Assignee shall be bound by this Covenant to repair the Houses during the Life of the first Lessee, tho' the Assignee be not named, because the Covenant runs with the Land, being made for the Maintenance of a Thing in Esse at the Time of the Lease made. P. 38 El. B. R. between the Dean of *Windsor and Hide* adjudged in a Writ of Error upon a Judgment in Banco thereof.

5 Rep. 24. a. b. the Dean and Chapter of Windsor's Case, S. C. adjudged Mich. 43 & 44 Eliz. B. R. per tot. Cur. —Cro. E. (457.) pl. 1. Pasch. 38 Eliz. B. R.

Hyde v. Windsor, S. C. adjourned. —— Ibid 552. Pasch. 39 Eliz. B. R. the S. C. and Judgment affirmed. — Mo 399 pl. 523. S C. adjornatur, but afterwards adjudged with the first Judgment.

2. But the Assignee shall not be charged in a Writ of Covenant for any Breach after the Death of the first Lessee, in as much as it is Personal to the Lessee himself. P. 38 El. B. R. agreed between the Dean of *Windsor and Hide*.

S. P. by Gawdy v. Fenner J. Cro. E. 457. (bis) pl. 1. in Case of Fenner J. inclined to it; But Popham and Clench e contra, and so it was afterwards adjudged. Mo. 399, 400. pl. 523. in S. C.

Hyde v. the Dean &c. of Windsor, S. C. —— S P. by Gawdy J. accordingly, and

3. Resolved, that *when a Covenant extends to a Thing in Esse, Parcel of the Demise, the Thing to be done* by Force of the Covenant *is quodam modo annexed and appurtenant to the Thing demised, and shall run with the Land, and shall bind the Assignee though that he be not bound by express Words*; but when the Covenant extends to a Thing which had not Essence at the Time of the Demise made, this cannot be appurtenant or annexed to a Thing which had not Essence; As if the Lessee covenant to * repair the Houses &c. this is Parcel of the Contract, and extends to the Supportation of the Thing demised, and shall bind the Assignee though that he be not expresly named; But in the Case above, the Covenant concerns a Thing which was not in Esse at the Time of the Demise made, but to be newly made afterwards, and therefore it shall bind the Lessee, his Executors and Administrators, and not the Assignee. 5 Rep. 16. Pasch. 25 Eliz. B. R. the first Resolution in Spencer's Case.

* S. C. & S. P. cited, Arg. Lev. 109. Mich. 14 Car. 2. B. R. and the Court agreed to it.

4. It was resolved, that if the Lessee covenant for himself and his Assigns, *to make a new Wall upon Parcel of the Land demised*, there, in as much as this is to be done upon the Land demised, it shall bind the Assignee; for this being to be done upon the Thing demised, the Assignee is to take Benefit of it, and therefore he shall be bound by express Words. *But* if the Covenant be for him and his Assigns, *if the Thing to be done be merely collateral to the Land*, and does not touch the Thing demised in any Sort, there the Assignee shall not be charged; *As* if the Lessee covenant for him and his Assigns *to build an House upon the Land of the Lessor, which is not Part of the Demise*, or to pay any collateral Sum to the Lessor, or to a Stranger, this shall not bind the Assignee

S. P. resolved upon the Statute 32 H. 8. that the Grantee of the Reversion, or the Grantor, might have an Action of Covenant against the

Aſſignee, for by the Acceptance of the Poſſeſſion he had made himſelf ſubject to all Covenants concerning the Land, and the Building of a Wall was a Covenant inherent to the Land with which the Aſſignee ſhould be charged, though there wanted the Word Aſſignees in the Deed. Mo. 159 pl. 300 Hill. 26 Eliz. Anon.

Aſſignee, and here the Aſſignee ſhall not be charged any more than any other Stranger. 5 Rep. 16. b. the ſecond Reſolution in Spencer's Caſe.

5. If a Man *demiſes Sheep, or other Stock of Cattle, or any other Perſonal Goods*, for any Time, and the Leſſee covenants for him and his Aſſigns, to deliver at the End of the Time ſuch Cattle or Goods as good as the Things demiſed are, or ſuch a Price for them, and the Leſſee aſſigns over &c. this Covenant ſhall not bind the Aſſignee, becauſe it *is but a Perſonal Contract*, and wants ſuch a Privity as that is between the Leſſor and Leſſee and his Aſſigns upon Account of the Reverſion. 5 Rep. 16. b. 17. a. the third Reſolution in Spencer's Caſe.

6. But in Caſe of a Leaſe of Goods Perſonal there is not any Privity, nor any Reverſion, but meerly a Choſe en Action in the Perſonalty, but cannot bind any but the Covenantor, his Executors and Adminiſtrators; *So* it is if a Man *demiſe* for Years a *Houſe and Land with a Stock or Sum of Money, rendring Rent*, and the Leſſee covenants for himſelf, his Executors and Aſſigns, to deliver the Stock or Sum of Money at the End of the Term, yet the Aſſignee ſhall not be charg'd with this Covenant, for though the Rent reſerved was increaſed in reſpect of the Stock or Sum, yet the Rent does not iſſue out of the Stock or Sum, but out of the Land only; and therefore as to the Stock or Sum, the Covenant is Perſonal, and ſhall bind the Covenantor, his Executors and Adminiſtrators, but not his Aſſignee; And it is not certain that the Stock or Sum will come to the Hands of the Aſſignee, becauſe it may be waſted, or otherwiſe conſumed or periſhed by the Leſſee, and conſequently the Law cannot determine at the Time of the Leaſe made that ſuch Covenant will bind the Aſſignee. 5 Rep. 17. a. in the 3d Reſolution in Spencer's Caſe.

7. If a *Leſſee for Years covenants to repair the Houſes during the Term, this* ſhall bind all others as a Thing appurtenant and which *runneth with the Land* into whoſe Hands ſoever the Lands ſhall come, whether by Act in Law, or by the Act of the Party, for all is one with regard to the Leſſor; and if the Law ſhould not be ſo, great Prejudice would accrue to him; and it is but Reaſon that they who take Benefit of ſuch Covenant made by Leſſor with the Leſſee, ſhall be bound by ſuch Covenants made by Leſſee with the Leſſor. 5 Rep. 17. b. Paſch. 25 Eliz. B. R. the 6th Reſolution in Spencer's Caſe.

Gouldsb. 129. pl. 25. and 186. pl. 12. S. C. & S. P. agreed. — Cro. E. 383. pl. 3. S. C. Gawdy and Clench held, that the Action lay, but Fenner e contra, abſente Popham, adjornatur.

8. Aſſignee of Leſſee for Years is chargeable with a *Nomine Pœnæ incurr'd after the Aſſignment*, but not before. Mo. 357. pl. 4. 486. Trin. 36 Eliz. Thyn v. Cholmley.

9. If a *Leſſee covenants to diſcharge the Leſſor De omnibus oneribus Ordinariis et Extraordinariis, and to repair the Houſes*, an Action lies againſt the Aſſignee, in reſpect that the Leſſee has taken upon him the Charges of the Reparation, the annual Rent was the leſs, which trenches to the Benefit of the Aſſignee, Et Qui ſentit Commodum, ſentire debet et Onus. 5 Rep. 24. b. Mich. 43 & 44 Eliz. B. R. Dean and Chapter of Windſor's Caſe.

10. Error; *Leſſee for Years covenanted to pay yearly during the Term, to the Church-Wardens of S. 20 s. and to repair the Houſes*, and becauſe the *Aſſignee did not pay the 20 s. nor repair*, Covenant was brought againſt the

the Aſſignee; Reſolved, the Aſſignee is not to pay this 20 s. becauſe it is a *collateral Thing* to the Covenant; alſo it is not ſhewed for what Time the Sum was behind; and thereupon adjudged that the Declaration was not good, and the Damages being intire, a Judgment in B. R. was reverſed. Cro. J. 438. pl. 10. Mich. 15 Jac. in Cam. Scacc. Mayho v. Buckhurſt.

11. In Debt *for Rent* an *Aſſignee is chargeable for the Time he enjoys* it, and is in Poſſeſſion; Per Holt Ch. J. Show. 348. Paſch. 4 W. & M. Buck v. Bernard.

(L. 2) Extent of Covenant to diſcharge.

1. BOND to make *Appropriation* diſcharged *of Incumbrances* though a *Penſion* was charg'd upon it, yet held that the Obligee was not to diſcharge it of that Penſion; Arg. 3 Le. 44. cites 3 H. 7. 4.

2. Covenant in a Feoffment with Warranty that it is diſcharged *of all Rents*, this ſhall not extend to *Rent-Services* which are incident to the Lands of Common Right; Arg. 3 Le. 44. in pl. 64. Mich. 15 Eliz.

3. Bond or Covenant to make a *Feoffment* of Land diſcharged &c. does not oblige to diſcharge it of *ſuch Things with which it is charged by the Law*; Arg. 3 Le. 44.

4 A *Biſhop* in 1635 *leaſed Lands, and covenanted to pay all Taxes during the Term.* Adjudg'd that this Covenant *cannot bind the Succeſſor, unleſs* ſueh Covenants had been *uſual in former Leaſes*; *And though* ſuch Covenants had been *in former Leaſes, yet it cannot bind to pay a new Tax* (as the Tax for a Royal Aid made in 1665.) made by Parliament, but ought to be intended of ſuch as were then in Uſe, viz. Synodals &c. And Hale cited a Caſe to have been ſo adjudg'd before. 2 Lev. 68. Mich. 24 Car. 2. B. R. Davenant v. the Biſhop of Sarum.

Vent. 223. S. C. but S. P. not determined; but Hale Ch. J. ſaid, it would be hard to extend it to new Taxes; and that they all knew how late this way of Taxes came in. ——— 3 Keb. 69. pl. 11. S. C. and Succeſſor is not bound but only by ancient Charges.

5. A Covenant to diſcharge *from Taxes* extends to ſubſequent Taxes of the ſame Nature, not of a different Nature. 1 Salk. 198. pl. 4. Hill. 9 W. 3. B. R. in Caſe of Brewſter v. Kidgell.

(L. 3) To repair. Extent thereof.

1. COvenant was to repair the Houſes, Edifices and Buildings, with neceſſary Reparations, and to keep the *demiſed Premiſſes* with Paling and Fencing, and at the End of the Term would leave the Houſes, and other the Premiſſes, ſufficiently repaired, maintained &c. Breach was aſſigned in not repairing &c. the *Pavement in the Court*, and in *carrying away Locks and Keys of a Cupboard*, the *breaking* of the *Glaſs Windows*, carrying away a *Shelf*, which was not ſhewn to be fixed &c.

2 Brownl. 56. S. C. argued; ſed adjornatur. ——— 2 Bulſt. 102. S. C. and Judgment in C. B. affirmed.

It was objected, that the Pavement was out of the Covenant; for it is neither Building, Paling, nor Fencing; ſed non allocatur; For it is within the Intention of the Covenant, and is Quaſi the Building, and within the Words of (leaving them ſufficiently maintained, repaired &c.) And it was objected, that the Aſſignment of the Breach in Glaſs being broken cannot be in *Glaſs* which is but *crack'd*, and it is not within the Intention of the Covenant that ſuch petty Things ſhould be a Breach thereof; ſed non allocatur; and as to the Shelves, though not ſhewn to be fixed, they ſhall be intended to be ſo, and it is ſaid, that Diverſæ Res affixæ aſportatæ fuerunt, and ſo a former Judgment was affirmed. Cro. J. 329, 330. pl. 8. Mich. 11 Jac. B. R. Pyott v. Lady St. John.

2 Keb. 848. pl. 94. S. C. but S. P. does not clearly appear.——Ibid. 879. pl. 53 S. C but obſcurely reported; but ſays, the Court held, that

2. Tenant in Fee of a Houſe and Mill made a *Leaſe to L. for* 31 *Years*, and *L. demiſed the Mill to J. S. for* 5 *Years*; afterwards *L. demiſed the Houſe and Mill* to F. for 31 Years. *F. covenanted to repair during the aforeſaid Term of* 31 *Years*; *J. S. refuſed to attorn.* The Queſtion was, if F. was bound to repair the Mill, the Covenant being to repair during the Term, and nothing in the Mill paſs'd during the 5 Years for want of Attornment; But reſolv'd, that he was bound to repair; For Hale ſaid, that *though the Leaſe did not commence in Point of Intereſt, yet it did in Point of Computation*, and this Covenant was to repair during the 31 Years. Vent 185. Hill. 23 & 24. Car. 2. B. R. Lewin v. Forth.

though till Attornment the Defendant has but an Intereſt and no Reverſion, yet the Term begins by Computation from the firſt Day, and though there is no Remedy for the Rent till Attornment but by Covenant for enjoying the Rent yet it was the Defendant's Fault that he did not take a Covenant that he Defendant ſhould attorn; And Judgment for the Plaintiff.

3. Covenant in a Leaſe to repair &c. *prædimiſſa from the Time of the Leaſe to the Determination* thereof, and ſo *well kept* in Repair, ſhall *give up at the End of the* Term, not ſaying from Time to Time; afterwards the Leſſee builds a *Malt-Houſe*, and if the Covenant ſhall extend to it was the Queſtion; and held that it ſhould in this Caſe; For it is a continuing Covenant, and though the Houſe *had no actual*, yet it had a *potential Being* at the Time of the Leaſe; Judgment Niſi. Skin. 121. pl. 17. Trin. 35 Car. 2. B. R. Brown v. Blunden.

3 Lev. 264. Dowſe v. Earle, S. C.

4. A. *grants a building Leaſe of* 3 *Meſſuages* to B. who covenants to pull them down, and *build* 3 *others in their Room, and to keep and leave the ſaid* 3 *new built Meſſuages, and all other the ſaid Premiſſes, Houſes and Buildings, to be erected in good Repair.* B. *builds* 4 *Houſes inſtead of* 3; per 3 Juſtices, contra Rokeby B. muſt leave all 4 in Repair, becauſe of the laſt Words which they held made a diſtinct Covenant. 2 Vent. 126. Hill. 1 & 2 W. & M. in C. B. Dowſe v. Cale.

5. A Covenant was to keep in good Repair the Houſe, Outhouſes and *Stables*; The permitting the *Racks in the Stable* to be in Decay is a a Breach of Covenant if they were fix'd up for Uſe, and lay not looſe; Admitted. 2 Vent. 214. Mich. 2 W. & M. in C. B. Anon.

(L. 4) Conſtruction, and Extent of Covenants in general.

1. A Covenant in Law ſhan't be extended to make a Man *to do more than he can do.* Brownl. 22. 12. Jac. Rot. 538. Bragg v. Wiſeman.

2. A Covenant *for perfecting a Conveyance by further aſſurance, and for Quiet enjoyment* &c. *when they follow an expreſs Grant, they are not to*

give any thing, but to assist further and support, being a Wall or Monument about it, and therefore cannot be be intended to exceed that whereunto they are said to be but Handmaids, and they are not to be taken as if they stood alone, without respect to the whole Context, and Intent of the Deed; So *Clauses in company* have other Constructions than when they stand alone. Per Hobart Ch. J. Hob. 275. Mich. 13 Jac. in the E. of Clanrickard's Case.

3. Covenant ought to be constru'd according to the *Intention of the Parties*, *As* if one Covenant to *leave* all the *Timber upon the Ground* at the Expiration of the Term, and after *Cut it down* it is a Breach of Covenant tho' he carry it not away; but if a Stranger cut it down it is no Breach of Covenant. Skin. 40. Arg. pl. 8. Pasch. 34. Car. 2. B. R. Anon.

4. *So* if Covenant be to deliver an Horse, and the Defendant *Poisons and then delivers him*; Covenant lies. Skin. 40. Arg. pl. 8. Pasch. 34 Car. 2. B. R. Anon.

5. Words of Covenant shall be construed *favourably to support an Estate* as to create a Lease, but words of Covenant shall *not be construed conditionally to defeat an Estate.* Per Justice Powell, at Lent Assises in Devon. 1708.

(L. 5) Construction and Extent as to Repairs. And Pleadings.

1. A Leased a House and Land to B. B. covenanted *to leave* it *in the same Plight at the End of the Term* as they were at the Commencement. At the time of the Demise the *Land was sown*, and the Houses in good Repair, and now in Action of Covenant the Count was that the *House was ruinous and the Land not sown*, and it was held well, and that a Man by special Act [or Covenant] may bind himself to a Thing which the Law does not bind him to, As where a House is burnt by suddain Adventure, Covenant lies though Waste does not. Br. Covenant, pl. 4 cites 40. E. 3. 5.

2. If a Man covenants *to leave the Land as he found it*, and the *Wind tears up the Trees by the Roots*, the Covenant [as to this] is void. Br. Covenant, pl. 4. cites 40. E. 2. 5. Br. Wate, pl. 18. cites S. C.

3. If *Aliens* come suddenly and *burn a House*, Waste does not lie, but Contra of Covenant by *special Words*. per Cand. Br. Covenant, pl. 4. cites 40 E. 3 5. As where Lessee conants to leave the House, in as good Plight at the end of the Term, as he found it. Br. Waste pl. 19. cites S. C.

4. If I have a *Farm with a Stock of Cattle* and I *covenant to render so many at the End of the Term*, there if *they die by a suddain Murrain*, yet I must make them good at the End of the Term, per Morrice quod Cand. concessit. Br. Covenant, pl. 4. cites 40 E. 3. 5.

5. If a Man *Leases for Years*, and *a Strangers enters by Title*, the Lessee shall not have Covenant against the Lessor himself; For he has not broken the Covenant, and also there is no Warranty; but per Needham he shall have Covenant, for the Lessee has no other Remedy. Br. Garranties pl. 89. cites 32 H. 6. 32.

6. If a Man *leases a Manor for Years*, and the *Lessee Covenants to keep the Houses of the Manor in as good Estate as he found* them, *during the Term*; the Mo 313. Arg. S. P. cites Temps

E. 1. Fitzh. Covenant. 29 ——7 Rep. 15. a S. C. cited per Cur —— S. C. cited by Doderidge J.

the *Leſſee does Waſte* in the Houſes and in cutting of Aſhes, the Leſſor brings Covenant before the End of the Term for the Aſhes; For as to them it was impoſſible that the Covenant ſhould be performed for he cannot repair them, but otherwiſe it is of the Houſes. Per Cur. 5 Rep. 21. a. Paſch. 35 Eliz. B. R. in Sir Anthony Maine's Caſe, cites Tempore E. 1. tit. Covenant 29. and ſays that with this agrees F. N. B. 145 (I) and 12 E. 3. tit. Covenant 2.

Godb 335. pl. 429 ——S C. cited by Chamberlaine J. 2 Roll Rep. 347.———Mo. 323. Arg. cites 12 E. 3. tit. Covenant, pl. 2. S. P. ——2 Roll Rep. 332. Doderidge J. cites 10 E. 3. tit. Covenant [but it ſeems miſprinted for 12 E. 3.] but ſays that Covenant does not lie during that Term, becauſe he was to relinquiſh his Farm, and this is not during the Term, but that Waſte lies preſently.

7. Leſſee covenants to repair, *provided Leſſor finds him Timber.* Leſſee is not bound to repair without Timber found by Leſſor. Per Anderſon Ch. J. 2 And. 72. cites 5 Eliz.

8. *Structura & Paviamenta* are *Synonimous* and a Covenant to repair, and leave in Repair the Structures extends to the Pavements. 2 Bulſt. 103. Trin. 11 Jac. St. John v. Piott.

Poph. 146. Talbot v. Lacen, S. C. it was objected that in Fine Termini was uncertain, becauſe it may extend after the Term, but ad Finem Termini had been ſufficient, and

9. Tenant for Life of a Park made a Leaſe thereof, with all Profits of the Deer for 5 Years, and the Leſſee *covenanted to repair the Park, and to leave it well repaired in the End of the Term*; and in an Action of Covenant brought by the Leſſor, after the End of the Term, the *Breach aſſigned* was, *that the Defendant did not repair, but at the End of the Term fecit vaſtum, (viz.) in Permittendo the Park Pales to be in Decay* &c. it was objected, that this Breach was not well aſſigned; becauſe there was an Inſtant of Time in which it could not be properly ſaid, that fecit Vaſtum; Sed per Curiam, though a thing cannot be done in an Inſtant of Time, the Waſte cannot [may] happen Permittendo in fine Termini, ſo Note the Difference between doing a Thing, and permitting a Thing to be done. 2 Roll Rep. 38. Trin. 16 Jac. B. R. Talbot v. Leviſon.

cited old Book of Entries 169; For when he Covenants that at the End of the Term he would leave the Premiſſes in Repair, & Ad Finem Termini, he did Waſte, this muſt neceſſarily be intended a Breach of the Covenant, and therefore it was adjudged that the Action of Covenant well lies.

10. Leſſee Covenants to repair the Houſe to him dimiſed, *during the Term, or within three Months after Notice* given, *and to leave it ſo repair'd.* Adjudged that it is the Election of the Leſſor either to give Notice, or if the Leſſee does not repair the Houſe during the Term to bring Covenant, and that they were *ſeveral Covenants*, and if the Leſſee comes without licence after the Term to repair the Houſe, he is a Treſpaſſor, the firſt Covenant being abſolute, the ſecond Conditional, and the one does not take away the effect of the other. 2 Roll R. 250. Mich. 20 Jac. B. R. Anon.

This Houſe conſiſted of ſeveral Houſes and Outhouſes, now this Covenant of the Leſſor ſhan't be conſtrued, to extend

11. Leſſor covenants to repair, Leſſee covenants that *ab & Poſt Emendationem & Reparationem* dicti Meſuagii *by the Leſſor* his Heirs and Aſſigns, he at his proper Coſts and Charges *bene & ſufficienter repararet* & ſuſtineret. Held that though the Meſſuage was in good Repair at the firſt, yet if afterwards it decay, the Leſſor is firſt to repair it before the Leſſee is bound thereto. Cro. J. 645 pl. 7. Mich. 20. Jac. B. R. Slater v. Stone.

only to ſuch Buildings as wanted Repair. Ibid.———Adjudged that Covenant does not lie, for tho' it was in good Repair and Leſſee pull'd them down, yet it is not within the Reach of the Covenant, if the Leſſor does not firſt Repair, but the true remedy was by Action of Waſte. 2 Roll R. 248. S. C.

12. In Covenant the Plaintiff declared on a Covenant *to repair all the Pales in a Garden demiſed (except the Pales on the Weſt-Side)* and *aſſigned the Breach in not repairing* the Pales *contra formam conventionis, &c. but did not ſhew that the Defect was of Repairing the Pales not excepted*; The Defendant pleaded, that he had repair'd the Pales ſecundum conventionem, &c. After Verdict for the Plaintiff it was moved in Arreſt, that the Breach was not well aſſigned; For the Defect might be in the Pales excepted; Sed non allocatur; For it ſhall be *intended after a Verdict*, that the Jury gave Damages, for that the Defect was in the Pales to be repaired by the Covenant, and the rather, becauſe the Iſſue was upon the Repair Secundum Conventionem, which does not extend to the Pales excepted. But agreed that if the Defendant had demurred, Judgment ought to have been for him. 2 Jo. 125. Hill. 31 & 32 Car. 2. B. R. Anon.

(L. 6) Conſtructions. Excluſive of Legal Incidents or Advantages.

1. LESSEE for Life Covenants ſufficiently to *repair the Houſes at his own Coſts* during the Term; he is not *eſtopped* by this Covenant or excluded by it of the Benefit, given him by the Law, of cutting Timber for the Repairs. Mo. 23. pl. 80. Paſch. 3 Eliz. Anon. Dal. 28. pl. 3. S. C. in totidem Verbis.——Mo. 7. in pl 23. Paſch. 3 E. 6. Anon. S. P. by Montague, Brown and Fitzherbert.

If Leſſor *Covenants that Leſſee may cut Trees in other Lands not leaſed*, yet Leſſee may cut the Trees growing upon the Land in Leaſe. Mo. 23. pl. 80. Paſch. 3 Eliz. Anon. Dal. 28. pl. 3. S. C. in totidem Verbis.—*So of Eſtovers.* Mo. 7. Paſch. 3 E. 6. Anon. S. P. by three Juſtices.

(L. 7) Breach or Performance what. And by whom.

1. IF a Man makes a *Feoffment* of Land *by Deed with Warranty*, and a *Stranger extends a Recogniſance* of the Feoffor's upon the Feoffee, Covenant lies here. 17 Ed. 3. 18. a.

2. If a *Parſon makes a Leaſe for Years, and* afterwards *reſigns*, it is a Breach of Covenant. Hob. 35. cites 12 H. 4. 3.

3. Where a Man is bound *to make ſure Eſtate by ſuch a Day of Land, called H. to the Annual Value of* 10 *l.* and he makes Eſtate by the Day of Lands called H. to the *Yearly Value of* 8 *l.* he has not perform'd his Covenant. Quære. Br. Conditions pl. 9. cites 27. H. 8. 29.

4. If *Lord of a Manor, in which are Freeholders and Copyholders*, is *ſeiſed of a Chalk-pit*, and *leaſes it with a Covenant that neither he nor any of his Tenants or Undertenants ſhould dig Gravel, other than for Repairs*; if *Leſſee of a Copyholder digs*, the Covenant is broke; Per Hyde. Keb. 775. in pl. 11. Mich. 16 Jac. B. R. in Caſe of Bourman v. Acton. So if *A. is Tenant to B. who holds of C.* In this Caſe *A. is Undertenant to C. and A. digs; this is a Breach*, for though he is not the Immediate Tenant to C. yet he is ſo mediately, and Judgment accordingly. Lev 144. Burman v. Aſton, S. C —— Keb. 806 pl 76. S. C. and per Cur. Undertenant is any that comes in under the Lord's Intereſt, and cited the Caſe of * Bromfield v. Williamſon, where the Covenant was that Leſſee and his Aſſigns would pay the Rent, and adjudged

judged that the Tenant at Will or his Aſſignee is within the meaning thereof; and ſo per Hide if Leaſe for 99 Years be of Copyhold, which has Common in the Waſte, and Leſſee covenants that he nor his aſſigns ſhall not uſe the Waſte with Cattle, in this Caſe if his Under-Aſſignee of part puts in Cattle it is a Breach, and Judgment accordingly.

* Sty. 407, 408. Hill. 1654 B R. adjudg'd Niſi.

Freem. Rep. 20, 21. pl. 24 S. C reſolv'd accordingly, and that the Covenant if he will not revoke &c. extends only to the Grant of the Scribe's Place. And Vaughan Ch. J. ſaid, that it is no more than if a Juſtice of Peace grants to one to be his Clerk, and covenants not to revoke or annul the ſaid Grant, yet if he be afterwards put out of Commiſſion he hath not broke the Covenant. For it is but while he is Juſtice of Peace; And ſo of a Bailiff of a Manor, or Keeper of a Park, the Owner may diſpark.

5. The Teſtator of G. was *Regiſter to* the *Archdeacon* of Suffolk, and *grants the Office of his Scribe to the Plaintiff, and covenants that he ſhall enjoy it as long as he or any other Perſon had or did claim the Place of Regiſter under him, and that he would not revoke, annul, or evacuate the ſaid Grant*; afterwards *he ſurrenders his Place to the Archdeacon*, and the Plaintiff being diſturbed brings Covenant; Reſolved that it would not lie, becauſe that having ſurrendred his Place, the Archdeacon did not claim under him, but his Eſtate was abſolutely drowned; and the Covenant was but for as long as he or any Body claiming under him had the the Office of Regiſter. Freem. Rep. pl. 19. Mich 1671 in C. B. Stebing v. Gladding.

6. *Leſſee covenanted* with the Leſſor, *that Leſſor ſhall cut* 20 *of the beſt Trees growing on the Land at any Time during the Term*; but *before the Leſſor cut the Trees the Leſſee cut 5 Trees for Houſe-boot.* The Court held that this is a Breach of Covenant, by deſtroying the Election of the Leſſor, and it was the Leſſee's own Fault to make ſuch a Bargain. Freem. Rep. 397. pl. 516. Trin. 1675. Moterton v. Jollin.

Keb. 389. pl. 82. Barnard v. Ree S. C. & S. P. agreed. ——Freem. Rep. 379. pl. 494 Ren v. Barnes S. C. & S. P. per tot. Cur.

7. Debt was brought on a Covenant in a Charter Party *to pay the Plaintiff* 3 *l. a Ton for Goods imported*; The *Breach* aſſign'd was *in not paying for ſo many Tons, and one Hogſhead*, which amounts to ſo much. The Declaration and Breach in aſſigning the Non-Payment for the Hogſhead is ill; For the Covenant is only to pay ſo much per Ton, but otherwiſe it would be if it had been to pay *Secundum Ratam* of ſo much per Ton. 2 Lev. 124. Hill. 26 & 27. Car. 2. B. R. Rea v. Burnis.

——See tit. Apportionment. (A) per tot.

8. 30,000 *l. is Covenanted to be laid out in Land*, the Money need not be laid out all together upon one Purchaſe, but *if laid out at ſeveral Times it is ſufficient.* Per Lord Talbot. 3 Wms's. Rep. 228. Mich. 1733. Lechmere v. Earl of Carliſle.

(L. 8) Actions. When the Action ſhall be brought.

1. A Man made a *Leaſe for Years*, and the *Leſſee Covenanted to make Reparations*; The *Leſſor granted the Reverſion* to another, and the *Leſſee* for Years *made his Wife his Executrix, and died*; It was holden in this Caſe by the Court, that *the Grantee* of the Reverſion *ſhould not recover Damages, but from the time of the Grant*, and not for any time before; *But* yet the Wife *the Executrix ſhould be charged for the*

not repairing as well in time of her Husband as in her own time; And if ſhe do make the Reparation, depending the Suit; Yet thereby the Suit ſhall not abate, but it ſhall be a good cauſe to qualify the Damages according to that which may be ſuppoſed, that the Party is damnified for the not repairing from the time of the Purchaſe of the Reverſion, unto the time of the bringing the Action. 3 Le. 51. pl. 72. Trin. 15 Eliz. C. B. Anon.

2. Covenant *to ſuffer a Recovery within a Year.* All the Terms are paſt and no Recovery ſuffered, yet *no Action lies* on that Covenant *before the Year be fully Expired though all the Terms are paſt*, and that it is impoſſible to do it within the time prefixed. Per Popham Arg. 4 Le. 170.

3 Leſſee covenanted *to leave the Houſes, Trees and Woods at the End of the Term in as good Plight* as he found them. Leſſee *cuts down a Tree*, the Covenant is broke and the Leſſor ſhall not ſtay till the End of his Term to bring his Action of Covenant, becauſe it is Apparent that the Tree can't grow again, and be in as good Plight as it was when he took the Leaſe. Per Doderidge J. Godb. 335. Trin. 21 Jac. B. R. in Caſe of Waterer v. Mountague, cites E. 1. Covenant, 29.

Arg. Mo. 313. S. C. cited —— S. P. accordingly as to the Trees; but if he pulls down the Houſes, the Leſſor ſhall not have Action of Covenant before the End of the Term. F. N. B. 145. (I) cites E. 1. Covenant, 29.

4. *I oblige myſelf to pay ſo much Money at ſuch a Day and ſo much at another Day*; The Court held clearly that Action of *lies if both Days are not paſſed.* Hardr. 178. pl. 4. Hill. 12 & 13 Car. 2. in Scacc. Norrice's Caſe.

3 Lev. 384. ad finem, cites S. C. but by the Name of Nowell's Caſe, that Covenant lies at the firſt Day, but that there is a Quære there as to Debt.

5. *Debt againſt the Aſſignee after the Leſſor has ſeveral Times refuſed to accept him for his Tenant.* 2 Saund. 181. Mich. 22 Car. 2. Devereux v. Barlow.

6. Covenant was brought againſt the Defendant as Aſſignee of one J. V. and the Breach aſſigned was, that neither the ſaid J. V. in his Life-time, nor the Defendant ſince his Death, had kept the Fences &c. in Repair. After Verdict for the Plaintiff Judgment was arreſted, becauſe the Action *does not lie againſt the Defendant as Aſſignee for a Breach in the Life-time of the Aſſignor*, and this Breach being aſſigned for a Default of Reparation of the Fence, as well in the Lime-time of the Aſſignor, as in the Time of the Defendant ſince his Death, and intire Damages given, the Plaintiff cannot have Judgment. Lutw. 360. 363. Trin. 12 W. 3. Britton v. Vaux.

(M) *In what Caſes* it lies *againſt an Aſſignee.*

Fol. 522.

1. IF A. demiſes to B. ſeveral Parcels of Land, and the Leſſee covenants for him and his Aſſigns to repair &c. and after the Leſſee aſſigns to D. all his Eſtate, in Parcel of the Land demiſed, and after D. does not repair that to him aſſigned, the Leſſor may have an Action of Covenant againſt D. the Aſſignee. Tr. 7 Car. B. R. between *Conham and King* adjudged per Curiam, this being moved in Arreſt of Judgment.

Cro. C. 221, 222. pl. 8. Congham v. King, S. C. Exception was taken, that the Defendant being Aſſignee of Parcel only of the Thing demiſed, he is not chargeable with this Covenant any more than the Aſſignee of Parcel

Parcel ſhall be charged in Debt for the Rent; ſed non allocatur; for this Covenant is dividable, and follows the Land with which the Defendant as Aſſignee is chargeable by Common Law, or by the Stat. 32 H. 8. and Judgment for the Plaintiff. —— Jo. 245. pl. 3. Conan v. Kemiſe, S. C. adjudged.

2. If a Man leaſes for Years, and the *Leſſee covenants to make Reparations* and other Covenants, and aſſigns his Term over, the Aſſignee ſhall be bound to thoſe Covenants; For they *run with the Land.* Br. Deputy, pl. 16. cites 25 H. 8.

3. J. S. *Leſſee covenanted to repair, and afterwards aſſign'd his Term to W. R. whom the Leſſor accepted for his Tenant,* and recover'd the Rent of him. *W. R. ſuffered the Houſe to be burnt down.* Though by Acceptance of the Rent of W. R. after the Aſſignment to him the Leſſor is barr'd of his Action of Debt for Rent againſt J. S. yet adjudg'd upon Demurrer that *Covenant well lies* againſt him. Brownl. 20, 21. Hill. 8 Jac. Fiſher v. Ameers.

S. C. cited Carth. 278.

4. Covenant *by Grantee of the Reverſion* lies *againſt the Leſſee after Aſſignment* of the Term, *though no Notice nor Acceptance of the Rent had been pleaded,* where there is an expreſs Covenant for Payment of the Rent; Per Cur. 3 Lev. 233. Trin. 1 Jac. 2. C. B. Edwards v. Morgan.

5. Covenant will not lie *againſt one meerly as Aſſignee* of the Land. 1 Salk. 198. pl. 4 Hill. 9 W. 3. B. R. in Caſe of Brewſter v. Kidgel, cites Hard. 87. pl. 5.

6. Leſſee covenants to rebuild and finiſh a Houſe within ſuch a Time; the Time expires; the Houſe not rebuilt. Leſſee aſſigns. Per Holt Ch. J. The Aſſignee is *not liable* for *Breach before Aſſignment*; But if the Leſſee had aſſign'd before the Term expired, the Aſſignee would be bound. 1 Salk. 199. Paſch. 12 W. 3. B. R. Greſcot v. Green.

(N) In what Caſes it ought to be brought *againſt* the *Aſſignee*; And in what Caſes againſt the *Aſſignor*.

* S. C. cited by the Name of Varnis v Goodcheape. Cro. J. 309. pl. 8. as adjudged for the Plaintiff on Demurrer.

† Cro. J. 309. pl. 8. S. C adjudged

‡ Cro. J. 521 pl. 7. S. C ſays, that this Point depended long in Queſtion,

1. IF a Man leaſes for Years, rendring Rent, and the Leſſee covenants for him and his Aſſigns to repair the Houſe during the Term, and after the Leſſee aſſigns over the Term, and the Leſſor accepts the Rent from the Aſſignee, and after the Covenant is broke, notwithſtanding the Acceptance of the Rent from the Aſſignee, yet an Action of Covenant lies againſt the firſt Leſſee, for the Leſſee hath covenanted expreſsly for him and his Aſſigns, and this Perſonal Covenant cannot be transferred by the Acceptance of the Rent. H. 10 Ja. B. R. between * *Ventrice and Goodcheap* adjudged; and the ſame Term, between † *Bernard and Godskall* adjudged. H. 16 Ja. B. R. between *Sir J.* ‡ *Brett and Cumberland* adjudged upon Demurrer. H. 16 Car. B. R. between *Norton* || *and Ackland* adjudged upon Demurrer. Intratur H. 15 Car. Rot. 549. Tr. 6 Car. B. R. between *the Counteſs of Devon and Collier* adjudged where the Breach was for Nonpayment of Rent. H. 20 Car. B. between *Crofts and Tailer* adjudged upon Demurrer, where the Breach was for Nonpayment of Rent. Intratur Hill. 19 Car. Rot. Barnard.

and after much Argument was at length reſolved, that he was chargeable with the Breach of this Cove-

Covenant, and that the Aſſignee of the Reverſion ſhould have the Action, by the Statute 32 H. 8. for it is a Covenant in Fait, and by the expreſs Words runs along with the Land; and notwithſtanding the Aſſignment, the Covenantor and his Executors are always chargeable, ſo that neither by the Aſſignment over of his Eſtate, nor by any Act he can do, can he diſcharge himſelf or his Executors, who are chargeable by he Act of their Teſtator, having Aſſets as long as the Leſſor continues the Reverſion in him; for the Executors are not chargeable by reaſon of the Privity of Contract, but by reaſon of the Covenant itſelf, and by the expreſs Words of the Statute of 32 H. 8. Such Remedy as the Leſſor might have had againſt the Leſſee or his Executors, ſuch Remedy the Aſſignee ſhall have againſt them, it being a Covenant in Fait, which runs with the Land; But otherwiſe it is of a Covenant in Law, which is only created by the Law, or of a Rent, which is created by reaſon of the Contract, and is by reaſon of the Profits of the Land, wherein none is longer charged with them than the Privity of the Eſtate continues with them, and this Covenant may charge the Aſſignee who has the Eſtate, and the Leſſee and his Executors who made the Covenant, all at one and the ſelf ſame Time, but Execution ſhall only be againſt one of them; for if he ſue an Action againſt the one, and after againſt the other, as he well may do, if he take ſeveral Executions, he who is laſt taken in Execution ſhall have an Audita Querela; wherefore it was adjudged for the Plaintiff. —— Roll Rep. 359. pl. 11. S. C. and it was held by Coke, Doderidge, and Haughton, that the Aſſignee ſhould have Advantage of this Covenant at the Common Law, becauſe it is a Covenant for Reparation of the Thing leaſed. —— 2 Roll Rep. 63, 64. S. C. adjudged for the Plaintiff. —— Poph. 136, 137 S. C. adjornatur. —— Godb. 276. pl. 391. S. C. adjornatur. —— S. C. cited Cro. C. 188. in pl. 8. —— Ibid. 580. pl. 3. cites S. C. —— S. C. cited per Cur. Saund. 240, 241. which ſee at pl. 3.

‖ Cro. C. 580. pl. 3. S. C. adjudged that the Action well lay.

2. **If a Leſſee covenants**, that he and his Aſſigns will repair the Houſe **demiſed, and the** Leſſee grants over his Term, **and the Aſſignee does not repair it, an Action of Covenant lies either againſt the Aſſignee at Common Law, becauſe this Covenant runs with the Land, or it lies againſt the Leſſee at the Election of the Leſſor.** 25 H. 8. **Brook Covenant** 32. See the Notes on the Caſe of Brett v. Cumberland in pl. 1. ſupra.

3. Q. Eliz. made a Leaſe for Years, rendring Rent, and Leſſee covenanted to pay it. The Queen died, and the Reverſion deſcended to K. James; after which the Leſſee aſſign'd over his Term. The Aſſignee paid the Rent to the King, and afterwards the King granted the Reverſion by his Letters Patents, and the Patentee accepted the Rent of the Aſſignee, and after brought Covenant againſt the Executors of the firſt Leſſee; and adjudg'd maintainable. Saund. 240, 241. per Cur. cites Cro. J. 521, 522. 16 Jac. * Brett v. Cumberland, and ſays, that this muſt neceſſarily be by Reaſon of the Privity of Contract transferr'd by Force of the Statute 32 H. cap. 34. for their was no Privity of Eſtate between them; becauſe the firſt *Leſſee* had *aſſign'd his Term before the Grant of the Reverſion* to the Patentee, which prove that by the Statute the Privity of Contract is transferr'd. * S. C. cited Arg. Show. 193.

4. If *Leſſee* for Years *aſſigns over his Term, the Leſſor having Notice thereof, and he accepts the Rent from the Aſſignee, he cannot demand the Rent of the Leſſee afterwards, yet he may ſue other Covenants* contained in the Leaſe againſt him, As for Reparations or the like; Per Jerman J. Sty. 300. Mich. 1651. Whitway v. Pinſent.

5. A *Diverſity* was obſerv'd *between Debt for Rent and Covenant for Rent*; For if the *Leſſee aſſigns over, and after Leſſor accepts the Aſſignee for his Tenant*, he cannot afterwards maintain the Debt for Rent againſt the firſt Leſſee, but he maintain Covenant againſt him; And one **Middleham's Caſe** in 13 Car. 1. was cited by the Chief Juſtice, and it was alſo now agreed, that if *Leſſee aſſigns* his Term, *and after Leſſor aſſigns his Reverſion*, and the *Aſſignee of the Reverſion accepts the Rent* of the Aſſignee of the Term, yet he may have Covenant againſt the firſt Leſſee. Sid. 402. in pl. 8. Hill. 20 & 21 Car. 2. B. R.

6 Though upon an expreſs Covenant for Payment of Rent Covenant lies againſt the Leſſee for **Rent** arrear after his Aſſignment, yet it ſeems that ſuch Action *lies not againſt Leſſee on a Covenant in Law*, as upon (Yielding and Paying) *after Aſſignment*; Nota. Sid. 447. pl. 9. Paſch. 22 Car. 2. B. R. Anon.

7. If a Man *covenants to pay Rent, and after aſſigns*, the *Leſſor may* upon this Covenant *charge the Party, or his Executors, or the Aſſignee*,

at his Election; and *ſo it is if there be* 20 *Aſſignments*, for the Party and his Executors are always liable upon the Deed to the Covenant; Dictum fuit. Freem. Rep. 337. pl. 417. Trin. 1673. in B. R. Anon.

8. If the *Aſſignee breaks the Covenant* he may be charged, or the Leſſee, or his Executors; but if an *Aſſignee aſſigns over*, and the *ſecond Aſſignee breaks the Covenant*, the *firſt Aſſignee cannot be charged*, but the ſecond Aſſignee that broke the Covenant, or *the Leſſee, or his Executors may*; Per Hale Ch. J. Freem. Rep. 338. pl. 417. Trin. 1673. in B. R. Anon.

1 Salk 81. pl. 2. Pitcher v. Tovey S C. and Judgment in C. B. reverſed in B. R. and and the Court held, that there was no Privity of Eſtate or Contract between the Plaintiff and Defendant,

9. A *Leaſe* is made for Years *to E. G. reſerving Rent.* *G. enters, and dies poſſeſſed*; S. his *Executor*, *4th June* 1658. *aſſigns to P. and P. the 4th June*, 1689 *aſſigns to J. M.* and for half a Year's Rent due on the 1ſt of January 1689 Covenant was brought againſt P. The ſole Queſtion was, if *Notice of the Aſſignment* ſhould be given to the Plaintiff, and adjudg'd maintainable by 3 Juſtices, contra Ventris. But this Judgment was afterwards reverſed in B. R. upon the Matter in Law, viz. that Notice of the Aſſignment to the Plaintiff *was not neceſſary*; For by the Aſſignment the Privity of Eſtate was gone, and there was nothing to ſupport the Action againſt the Defendant, he being only Aſſignee. 2 Vent. 234. Mich. 2 W. & M. in C. B. and 4 W. & M. in B. R. Tovey v. Pitcher.

and theſe failing the Plaintiff's Action muſt fail likewiſe, becauſe that muſt be founded either upon the one or the other; And as to an Objection that it might be aſſign'd to a Beggar, the Court anſwered, that it was the Leſſors own Fault and Folly to take the firſt Aſſignee for his Tenant, and that the Leſſor was not without Remedy; For that he might bring Covenant againſt the Leſſee's Executors, or he might diſtrain on the Land. —— Show. 340. S. C. in B. R. and Judgment in C. B. reverſed. —— 4 Mod. 71. S C. in B R. and that Judgment in C. B. reverſed. —— Carth. 177. S. C. adjudg'd in C. B. but reverſed in B. R. —— 12 Mod. 23. S. C. and Judgment in C. B. reverſed, and Nil Dictum as to Point of Notice. —— Comb. 192. Richards v. Turvey S. C. and by Holt Ch. J. Aſſignment by Aſſignee diſcharges him; becauſe he was only chargeable as having the Land; And there is no more Reaſon for his giving Notice to the Leſſor of his Aſſignment over, than of the Aſſignment to him by the Leſſee; and Judgment in C. B. was reverſed. ——S. C. cited Lord Raym. Rep. 368. and Holt Ch. J. ſaid, that that Judgment of C. B. was reverſed in B. R. by the Opinion of the whole Court, which Reverſal was grounded upon the Reaſon of Walker's Caſe 3 Rep. 23 &c.

10. *Executors of a Term aſſigns it over.* The *Aſſignee aſſigns it over to another.* The Executor ſtill liable, but it ſeems that the Executor's Aſſignee is diſcharged on his aſſigning it over. 4 Mod. 76. Hill. 3 & 4 W. & M. in B. R. in Caſe of Pitcher v. Tovey.

(N. 2) Againſt whom. By Agreement to the Eſtate.

Roll Rep. 359. Arg. cites S C. but cites it as a Leaſe to one for Life, Remainder to another, and that Leſſee for Life only ſeal'd the Counterpart, yet if he in Remainder after the Death of Leſſee for Life agrees to the Eſtate, he ſhall be ſubject to the Covenants. —— S C. cited Arg. 3 Bulſt. 163. cites S. C. and Ibid. 164. cited by Coke Ch J. —— Co. Litt. 230. b. 231. a. S. P.

1. A Feoffment was made by Deed with divers Covenants. *One of the Feoffees ſeal'd* the Deed, *but the other did not, but he occupied and ſurviv'd.* Adjudg'd that he ſhall be bound by the Covenants and Seal of his Companion. D. 13. b. pl. 66. cites 38 E. 3. to which Shelly agreed.

(N. 3) Lies againſt whom. Grantee. On Covenants by the Grantor, Feoffor, or Leſſor.

Leſſor for Years *covenanted* in the Leaſe, *that at the End of the Term he would make a new Leaſe to the Leſſee or his Aſſignees, and after granted over his Reverſion, and at the End of the Term the Leſſee brought Covenant againſt the Grantee.* Cited by Gawdy as a Caſe which he remembred lately adjudg'd in C. B. and to this all the Juſtices and Serjeants agreed. Mo. 159. in pl. 300. Hill. 26 Eliz.

(C) What will *extinguiſh* a Covenant.

1. If a Man covenants with Tenant for Life of an Houſe to find a Chaplain to ſing &c. in the Houſe every Saturday during the Life of the Covenantee, if the Covenantee ſurrenders to the Leſſor the Houſe, and re-takes an Eſtate for Years, yet the Covenant remains. 6 H. 4. 3. There is no ſuch Point at 6 H. 4. 3. and this ſeems miſprinted for 6 H. 4. 1.

a. pl. 5. S. P. by Hankford, that the Covenant is not extinct, but is a Thing executory between them, and lies in Privity by way of Action, though the other has the Houſe.

2. The ſame Law if he had granted the Houſe over, and he had not retook an Eſtate. 6 H. 4. 3. (Quære this, for after the Grant, how is it lawful for the Chaplain to come into the Houſe without a Treſpaſs ?)

3. A *Covenant in Law is abridged by an expreſs Covenant, though* it be *in the Affirmative.* D. 19. b. Marg. pl. 115. cites 4 Rep. 8. and 31 H. 8. 4. pl. 2. that * Reſervation to the Leſſor excludes the Generality of the Law, and that the Heir ſhall not have the Rent. * See Tit. Reſervation (N)

4. It was ſaid by Manwood Ch. B. that *by the Recovery of* the *Damages*, the *Leſſee ſhould be excuſed for ever after, for making of Reparations*; ſo as if he ſuffer the Houſes for want of Reparations to decay, that no Action ſhall thereupon after be brought for the ſame, but that the Covenant is extinct. 3 Le 51. pl. 72. Trin. 15 Eliz. C. B. Anon.

5. A collateral Covenant in a Leaſe *to do a Thing upon other Land* not leaſed is not gone by Leſſor's *Entry* into the Land leaſed. Mo. 402. pl. 534. Paſch. 37 Eliz Carill v. Read. See Tit. Condition (N. c) pl. 2. and the Notes there.

6. If a Man by Deed doth covenant *to build a Houſe, or make an Eſtate*, and *before the Covenant broken* the *Covenantee releaſes* to him *all Actions, Suits and Quarrels*, this does not diſcharge the Covenant itſelf, becauſe at the Time of the Releaſe nihil fuit debitum, there was no Debt or Duty, or Cauſe of Action in being; But in that Caſe a *Releaſe of all Covenants is* a good Diſcharge of the Covenant before it be broken. Co. Litt. 292. b.

7. If an *Eſtate* be *created, and a Covenant in Law annex'd to it*, the *Covenant ſhall ceaſe if the Eſtate ceaſes*; *But* if an *expreſs Covenant* is *annex'd*, and the Covenantor does not perform it, *Action lies* for not performing it, *though the Eſtate be avoided*; Agreed Arg. 2 Brownl. 159. Paſch. 10 Jac. C. B.

8. *Where*

8. *Where an Eſtate is determinable and relative covenants are in the ſame Deed*, there *when the Eſtate determines the Covenants are gone*; but if Eſtate paſs, the Covenants may be good enough; *As* where a Charter of *Feoffment* is made *with a Letter of Attorney to make Livery, and a Covenant to quietly enjoy from henceforth, if the Party be diſturbed before Livery the Covenant is broken*; Arg. Freem. Rep. 175. in pl. 187. Mich. 1674. Done v. Dr. Barebone.

2 Mod 138. Cook v. Herle, S. C. adjudged.

9. A. covenants with B. *to pay a Rent to the Uſe of C.* though the Covenant (being Collateral) is not transferr'd by the Statute of Uſes with the Remedies incident by Law to the Grant, yet the Covenant is not diſcharg'd; And Judgment accordingly. Mod. 223. pl. 12. Mich. 28 Car. 2. C. B. Boſcowen v. Crooke.

10. A Covenant however good in its Creation may be extinguiſhed afterwards by the *Death of the Covenantor to whom the Covenantee was Heir*; Agreed by all the Judges of C. B. Comyns's Rep. 333 Mich. 6 Geo. 1. Madge v. Mudge.

11. *A. covenants on his Marriage to lay out* 3000 *l. in the Purchaſe of Land, and to ſettle it on A. in Tail, Remainder to B.* A. *Purchaſes the Manner of D.* with this 3000 l. and *never ſettles it, but ſuffers a Recovery thereof*; As the Covenant was a Lien on the Land, ſo the Recovery ſuffered of it, diſcharges the Lien, and bars B. of the Benefit of the Covenant, and of the Remainder. Reſolved without Difficulty. 3 Wms's Rep. 171. Hill. 1732. in Caſe of Sir Sam. Marwood v. Turner.

12. If Leſſee covenants *to repair* he is bound to do it, though the *Houſe is burnt down.* Comyns's Rep. 627. pl. 268. Hill. 12 Geo. 2. Cheſterfield (Earl of) v. Bolton (Duke of).

(P) What an Extinguiſhment, tho' the Leaſe continues.

1. By *recovery of Damages* in Action of Covenant for *Non-reparation*, the Leſſee ſhall be excus'd for ever after from making Reparations, ſo as if he ſuffer the Houſes for want of Reparation to decay, no Action ſhall hereupon be brought for the ſame, but the Covenant is extinct; Per Manwood. 3 Le. 51. in pl. 72. Trin. 15 Eliz. C. B.

2. The Prior of N. made a Leaſe for Life by Indenture, by which *Leſſee covenanted to find Victuals for the Cellerer* at all Times when the Cellerer came came thither to hold Court; The Prior was diſſolv'd, and the Poſſeſſions given to the Dean and Chapter newly erected, it was held, that *Leſſee ſhould perform the Covenant to him that ſupply'd the Office of Cellerer, viz. the Steward.* 4 Le. 187. M. 17 & 18 Eliz. B. R. Anon.

3. A. leas'd a Mill to B, and A. covenanted *to find eight Men to grind in the Mill every Day*, and that if A. fail'd therein, B. ſhould retain ſo much out of his Rent. *B. pull'd down* the Corn Mill and *made it a Horſe Mill.* Per tot. Cur. By the Alteration A is diſcharg'd of his Covenant and the Converſion is Waſte, tho' for the Leſſor's Advantage. Cro. J. 182. Trin. 5 Jac. B. R. City of London v. Grahme.

4. Debt on Bond condition'd to perform Covenants in a Leaſe; Defendant pleads, that after and before the Original purchaſed, the *Leaſe was cancell'd by Conſent* of Plaintiff and Defendant. Per Coke Ch. J. held clearly, the Plea is not good without Averment, that no *Covenant*

was

was *broke before* the Cancelling the Indenture. 2 Brownl. 167. Paſch. 10 Jac. C. B. Anon.

(Q) Continuing Covenant, tho' the Leaſe &c. is determined or ſurrendred.

1. IF *a Parſon leaſes his Glebe for Years and* after *reſigns*, by which the Leaſe is void, yet Action of Covenant lies againſt him; Quod Nota. Br. Covenant. pl. 42. cites 12 H. 4. 5.

2. *B. held* certain *Land for* term of 10 *Years of A.* It is *Covenanted between A. and B. that if B. pay* 100*l. to A. within the ſaid* 10 *Years*, that then *he ſhall be ſeiſed to the Uſe of B. in Fee*, and *B. ſurrendered his Term* to A. *and after paid him* 100*l. within the* 10 *Years*; there *B. ſhall have Fee*; For the Years are certain; *Contra where it is covenanted that if he pays* 100*l. within the Term aforeſaid*, and he ſurrenders and pays the 100 l. this is not good; For there the Term is determined, but in the other Caſe the 10 Years remain notwithſtanding the Surrender. Br. Expoſition pl. 44. cites 35 H. 8.

3. By the Statute 13 *Eliz.* [*cap.* 20.] of Leaſes it is enacted, that if a Parſon is Non-reſident on his Living for the ſpace of 80 Days, all Leaſes made by him, and all Obligations and Covenants &c. for enjoining it ſhall be void. It was adjudged that where a *Parſon made a Leaſe* for Years, in which were divers Covenants on the Leſſee's part, and afterwards the Leaſe *became void for Non-reſidency* &c. that for a Covenant broke before, an Action of Covenant did lie. Cro. E. 78. in pl. 37. Arg. cites 26 Eliz. Walls v. Cox. Cro. Eliz. 245. in pl. 2. cites Bylow's Caſe. S. P. held accordingly.

4. In Covenant the Caſe was, Tenant for Life leaſed for Years, and the Leſſee by Indenture *granted bargained and ſold* all his Eſtate, to have &c. in tam amplis Modo & Forma as he ought to hold it; this implies no *Warranty*, being the Words of the Leſſee for Years of a Tenant for Life, but determines with the Eſtate on the Death of Tenant for Life. Cro. E. 157. pl. 42. Mich. 31 & 32 Eliz. B. R. Landydale v. Cheney. Le 179. pl. 254. Cheney v. Langley. S. C. here is not any Warranty; For the Plaintiff is not Leſſee but Aſſignee to whom this Warranty in Law cannot extend; but admit that the Warranty extends to the Plaintiff, yet it determined with the Eſtate of the Tenant for Life, and ſo the Covenant ended with the Eſtate.

5. If *Tenant in Tail makes a Leaſe* for Years *and dies without Iſſue*, the Covenant determines with the Eſtate; Arg. And of that Opinion was the Court. Cro. E. 157. in pl. 42. Mich. 31 & 32 Eliz. B. R. Le. 179. in pl. 254. S. P.

6. Leſſee for Years of a Diſſeiſor covenants to *leave the* &c. *in good Repair, and yield them up to the Leſſor.* Leſſor brings Covenant and Leſſee pleads, that A. was ſeiſed in Fee till by the Plaintiff *diſſeiſed*, and afterwards A. *re-entred* who infeoffed J. S. who is yet ſeiſed &c. and upon demurrer adjudged a good Barr. Cro. E. 656. pl. 21. Hill. 41 Eliz. B. R. Andrews v. Needham. Noy 75 S. C. the Court thought the Leſſee diſcharged of the Covenant. For if the Land be gone the Obligation is diſcharged, and cites 20 H. 6. and 45 E. 3. 8.

7. A. leaſes to B. for 10 Years, and covenants *at the end of the Term to leave four Acres of the Land fallow'd* and plow'd, and in the Leaſe was a *Proviſo* that if B. miſlike his Bargain, that *on a Year's Warning B. may ſurrender his Eſtate*; B. afterwards *ſurrendered accordingly*. The acceptance of the Surrender is no diſpenſation of the Covenant, but otherwiſe

wiſe it the Proviſo had been *in the end of* 10 *Years*; for then if the Leſſor accepts the Surrender before the 10 Years expires, it is impoſſible for the Leſſee to perform the Covenant. Noy. 118. Auſtin v. Moyle.

3 Brownl. 154 153. S. C. adjudged.—Ow. 136. Waller v. the Dean &c. of Norwich S. C. and there a Difference is taken, *when an Eſtate is created in which is implied a Covenant in Law*, there *if the Eſtate be void the Covenant is void alſo*; *but* when there is an *expreſs Covenant in Deed* it is otherwiſe, tho' the Eſtate be void or voidable.———An Expreſs Covenant *depending on the Nature of the Conveyance and* which is only *auxiliary*, and goes along with the Eſtate, is void, if the Conveyance is void. Arg. Ch. Prec. 476. Mich. 1717. in Caſe of Furſaker v. Robinſon.

8. An Action was brought *upon an expreſs Covenant in a voidable Leaſe*; adjudged that the Action would lie though the Leaſe was void, and Coke Ch. J. ſaid, that if the Action ſhould not lie, a great Miſchief might happen; For a Dean might as To-day make a Leaſe to A. and keep it ſecret, and To-morrow make another to B. and covenant to enjoy, and ſo avoid the ſecond Leaſe. Brownl. 21. Trin. 9 Jac. Walter v. the Dean &c. of Norwich.

See (A) pl. S. C. printed there by Miſtake.

9. If a Covenant *depends on the Intereſt of a Leaſe*, *As* a Covenant *to repair the Thing demiſed*, *or to pay Rent*, theſe Covenants are void if the Leaſe is void, becauſe they immediately depend on the Leaſe; But where the Covenant is for a Collateral Thing, as a Covenant that the Leſſor is Owner at the time of the Leaſe, or the Leſſee ſhall enjoy it, or ſhall be diſcharged and ſaved Harmleſs, theſe Covenants being Collateral to the Leaſe and Intereſt are good tho' the Leaſe is void; Per Haughton Serjeant. Arg. Ow. 136. Paſch. 10 Jac. in Caſe of Waller v. Dean &c. of Norwich.

Lev. 45. S. C the Covenant and Obligation being both for the Corroboration of a Grant, which was void, they are alſo both void; and Judgment (as the Reporter ſays, he heard) for the Deſendant.———Keb. 130. pl. 54. 164. pl. 118. 183. pl. 156. adjudged for the Defendant. ———S. C. cited 1 Salk. 199. Arg. Et hoc fuit conceſſum, per Holt Ch. J. becauſe that was a relative and dependent Covenant, and if there be no Eſtate granted the Covenant fails.———S. C. cited Ld. Raym. Rep. 388. But per Cur. the Covenant in this Caſe was that the Covenantee ſhould enjoy the Term which was impoſſible, where no Term paſſed by the Deed.

10. A. poſſeſſed of a Term for Years *grants ſo much of the Term as ſhall be unexpired at his death*; the *Grantee aſſigns and covenants that the Aſſignee ſhall enjoy againſt all Perſons*, and the Plaintiff aſſigns a Breach and Iſſue upon it, and Verdict for the Plaintiff; It was moved in arreſt of Judgment that the Action did not lie, becauſe the original Grant being void for the uncertainty, the Covenants are void alſo, becauſe the Bond depends on the Covenants and the Covenants depend on the Leaſe. But it was anſwer'd, that the Term is not well aſſigned, but that here is a Covenant that ſtands diſtinct by itſelf, and if there be not any Covenant, then the Obligation is ſingle; Adjudged for the Defendant. Raym. 27. Mich. 13 Car. 2. B. R. Capenhurſt v. Capenhurſt.

Ld. Raym. Rep. 388. S. C. accordingly and ſo a Judgment in C. B. was affirmed.

* Ow. 136. Waller v. Dean &c. of Norwich.

12. Where there is a *Covenant and a Bond* to perform it, and it *refers to an Eſtate and is to wait upon it*, if there be no Eſtate granted, as where there is a Bargain and Sale but not enrolled, the Covenant fails As where the Deed was by the Words Grant, Bargain, and Sell &c. to the Plaintiff, and the Deed was not inrolled. But where a Covenant is diſtinct, ſeperate and * *Independant*, it is not Material whether any Eſtate paſſed, and the Plaintiff need not ſhew it, nor ſay Quod Defendens Conceſſit. But the beſt way is to declare Quod cum Teſtatum exiſtit, &c. and Judgment accordingly. 1 Salk. 199. pl. 5. Mich. 10 W. 3. B. R. Northcote v. Underhill.

(R) Diſpenſed withall by becoming afterwards Unlawful.

1. IF a *Parſon* has a Term with Condition *not to alien*, and then comes the *Statute againſt keeping a Farm*, yet it ſeems the Condition is good. Arg. 2 Brownl. 142. in Caſe of Portington v. Rogers, cites [D. 28. b. pl. 189] 28 H. 8. Leoman's Caſe.

A Leaſe for Years was made to a Clergyman before 21 *H.* 8. who covenanted not to alien *without Licence*, and then the 21 H. 8. was made, which prohibited any Clergyman to hold any Land in Farm; whereupon the Clergyman *aſſign'd without Licence*, and the Covenant was held not to be broken, becauſe 21 H. 8. 13. made it unlawful for him to hold it. 12 Mod. 169. Per Holt Ch. J. in delivering the Opinion of the Court, Hill. 9 W. 3. cites D. 27. ——Though the Statute *countervails a Licence*, becauſe every Man is privy to it (which they would not agree) yet it was ſaid that this Statute *ought to be alleged*, it being Erudition that where a Statute Licences a Thing it ought to be pleaded by thoſe that will take Advantage of it. D. 27. b. pl. 178. Hill. 28 H. 8. Abbot of Weſtminſter v. Leman.

2. A. had Eſtate in the Lands of B. and *before the Statute* 32 *H.* 8. *enabling Tenant in Tail to make Leaſes for* 21 *Years or three Lives*; A. was *bound in a Recognizance to B. not to alien* &c. but for Term of his own life. It was held by Bromley, Portman, and Harris Serjeants, that A. could not leaſe for 21 Years without Forfeiture notwithſtanding the Statute; But if he leaſed for 21 Years or three Lives, they thought that Remainder-man could not avoid the Leaſe after A's. Death without Iſſue, nor the Donor neither, though in the Statute were no Words of the Donor or Remainder-man. D. 48. b Paſch. 33 H. 8. pl. 5. E. of Bridgwater's Caſe.

Becauſe the the Act had given him only on Ability to do it, the Condition was not thereby diſpenſed with. Per Holt Ch. J. 12 Mod. 169. Hill. 9 W. 3. cites S. C. in Caſe of Brewſter v. Kidgell.

3. Covenant upon a *Charter-Party for Freight was* dated 10 of February, then comes an Act of Parliament, and ſays that all *French Goods imported after the 9th of March following ſhall be Forfeited, and prohibited the importing*; And this Agreement was for the Freight of the French Goods, and this was pleaded in Bar, to which the Plaintiff demurred and the Court inclined for the Plaintiff, *not* being a thing that was *malum in ſe*; the Court ſeemed ſtrongly for the Plaintiff; Sed quære. Skin. 161. pl. 9. Hill. 35 & 36 Car. 2. B. R. Dean v. Tracy.

4. Covenant *upon a Charter Party* for the Freight of a Ship, the Defendant *pleaded, that the Ship was loaded with French Goods prohibited by Law*, to be imported, and upon a Demurrer the Plaintiff had Judgment; For the Court were all of Opinion that if the Thing to be done was lawful at the time when the Defendant entred into the Covenant, though it was afterwards prohibited by Act of Parliament, yet the Covenant is binding. 3 Mod. 39. Hill. 35 Car. 2. B. R. Braſon v. Deane.

See pl. 3. which ſeems to be S. C.

5. Where H. Covenants *not to Do* an Act or Thing which was lawful to Do, and an *Act of Parliament* comes after and compels him to Do it, the Statute repeals the Covenant. 1 Salk. 198. Hill. 9 W. 3. B. R.

12 Mod. 169. S. C. & S. P. by Holt Ch. J. in delivering the Opinion of the Court. ——Comb. 467. S. C. & S. P. by Holt Ch. J.

6. So if H. Covenants *to Do* a Thing which is lawful and an *Act of Parliament* comes in and *hinders* him from Doing it, the Covenant is repeal'd. Ibid.

7. *But* if a Man Covenants not to Do a Thing which then was unlawful and an *Act* comes and makes it lawful to do it, ſuch Act of Parliament

Parliament does *not Repeal the Covenant.* Per Holt. 1 Salk. 193. pl. 4. Hill. 9 W. 3. B. R. Brewſter v. Kitchell.

8. *But* if a Man covenants *to do* a Thing which was *not lawful before*, and an Act *makes it lawful*, that Act does not repeal the Covenant. 12 Mod. 169. Hill. 9 W. 3. per Holt Ch. J. in delivering his Opinion of the Court in the Caſe of Brewſter v. Kidgell.

(S) What is a Covenant; And what a Conditional Leaſe &c.

Ibid Marg. cites Sparks's Caſe, fol. 8. pl 45. and Bendl. cap. 68. [but I cannot find it] that the Opinion of the Court was that no Leaſe for Years was held by this Proviſo; becauſe nothing of ſaid Term was given in Fact to the Leſſee for his Life, in his Life as Remainder to him and his Executors for 60 Years.

1. LEASE of a Houſe for Life by Indenture, provided always, that if the Leſſee die within 60 Years then next enſuing, that then his Executors and Aſſigns ſhall have and enjoy the Land as in Right of the Leſſee until the 60 Years are expired; The Court thought that this was not a Leaſe but only a Covenant. Dy. 150. a. pl.83. Trin. 3 & 4 P. & M. Parker v. Gravenor.

2. *Leſſee covenanted that it ſhould be lawful for the Leſſor to cut the Timber-Trees*, and the *Leſſor covenanted that it ſhould be lawful for the Leſſee to take Underwood, provided and the Leſſee covenanted that he would not cut Timber-Trees.* This Proviſo was adjudged a Covenant and not a Condition, becauſe the Intent appears to be only to abridge the Generality of the Covenant, precedent to which it is adjoined. Mo. 707. pl. 987. cited per Cur. as Paſch. 16 Eliz. Hannington v. Holland.

3. Arbitrators *award* that A. ſhall have the Lands, *yielding and paying* 10 *l.* per Ann. In this caſe it is not a Condition; for *it is not knit to the land by the Owner* itſelf *but by a Stranger*, viz. the Arbitrator. 3 Le. 58. Mich. 17 Eliz. B. R. Treſham v. Robins.

4. A *Recoveror made a Leaſe for Years, Proviſo that if the Leſſee dies within the Term, his Executors ſhall pay the Rent to him who ſuffer'd the Recovery*, this was adjudg'd a Covenant. Mo. 707. pl. 987. cited per Cur. as Mich. 28 & 29 Eliz. Pott's Caſe.

5. A *Recital in an Indenture, that before the Indenture the Parties were agreed to do ſo or ſo*, this was a Covenant, *As to ſay, whereas it was agreed to pay* 20*l.* For now the Indenture itſelf confirms the Agreement and Intent Precedent, though it be relative to the former Act in Pais, when it is declar'd by Deed it is now a Covenant by the Indenture; Per Hale Ch. J. and Judgment accordingly. 3 Keb. 465. pl. 47. Paſch. 27 Car. 2 B. R. Bareſoot v. Freſwell.

Or Non-payment of the Rent. 2 Brownl. 214. per Fleming Ch. J.

6. A Power to *dig up Trees making up the Hedges* is not a Condition, but Covenant lies for not repairing the Hedge. 2 Show. 202. pl. 209. Paſch. 34 Car. 2. Anon.

(T) That

(T) That Vendor &c. has a lawful Eſtate &c. notwithſtanding any Act done. And Pleadings.

1. COvenant that the *Lands are of the Value of* 1000 *l. per And. and ſo ſhall continue notwithſtanding any Act done, or to be done by him*; Adjudged that the Words (Notwithſtanding any Act) extends as well to the Time of the Covenant made as to the Time future, and though they were not then of that Value, the Covenant was not broken except ſome Act done by him was the Cauſe of it. Cro. E. 43. pl. 4. Mich. 27 & 28 Eliz. C. B. Rich v. Rich. And. 134. pl. 185. S. C. & S. P. agreed by all the Juſtices, and ſo Judgment was given againſt the Plaintiff.

2. The *Leſſor covenanted, that he had lawful Right and Eſtate to leaſe the Lands* &c. and in Covenant brought by the Leſſee, the *Breach aſſigned was, that the Leſſor had not a lawful Right and Eſtate to make a Leaſe*, and ſo had broke his Covenant; and adjudged that the Covenant being general the Breach may be aſſigned as General, and it lies not in the Plaintiff's Notice who has the rightful Eſtate, but the *Defendant ought to have maintained that he was ſeiſed in Fee and had a good Eſtate to demiſe*; and *then the Plaintiff ought to ſhew a ſpecial Title in ſome other*; But Prima Facie the Count is good, the Covenant being general, to aſſign a general Breach; therefore the Judgment was affirm'd. Cro. J. 304. pl. 6. Trin. 10 Jac. B. R. Salmon v. Bradſhaw. 9 Rep. 60. b. 61. a Bradſhaw's Caſe, S. C. adjudged.—— Jenk. 305. pl. 79 S. C. accordingly; for what Power he had lies in the Knowledge of the Covenantor, and not of the Covenantee. —— 2 Show. 460. S. C. cited per Cur. and ſaid, that it has always been allowed and agreed for good and ſound Law, and S. P. held accordingly. Ibid pl. 427. Hill. 1 & 2 Jac. 2. B. R. Lancaſhire v. Glover.—— S. C. cited Ibid. 473. Arg.

3. A. and B. were Jointenants for Years of a Mill; A. aſſigns all his Intereſt to C. without the Aſſent of B. and dies. B. after, by Indenture, *recites the Leaſe, and that it came to him by Surviorſhip, and grants the Reſidue of the Term to* J. S. and covenants that J. S. ſhall quietly enjoy notwithſtanding any Act done by him. C. ejects J. S. and adjudged that the Words (for any Act done by him) did not qualify the general Covenant to J. S. Cited per Yelverton J. Litt. R. Mich. 4 Car. C. B. as the Caſe of Johnſon v. Proctor. Yelv. 175. S. C. adjudged and affirmed in Error. —— Litt. R. 207. S. P. cited per Harvey J. as adjudged in Sir Thomas Earsfield's Caſe.

4. A. ſells to B. and covenants only againſt him, and all claiming by, from, or under him. B. ſecured the Purchaſe Money, but *before Payment* the Land was *evicted*, but not by a Title under A. but *by a Title Paramount*. B. ſued to be relieved againſt Payment, ſeeing the Land was loſt, and was relieved by the Lord Chancellor. Ex Relatione Churchill. 2 Ch. Caſes 19. 1679. Anon. Note 1ſt, if *Declaration at the Time of the Purchaſe* treated on, that there was an Agreement to extend againſt all Incumbrances, not only ſpecial ones, it could not be admitted. 2dly, The affirmative Covenant is negative to what is not affirmed, and all one as if expreſsly declared that the Vendor was not to warrant but againſt himſelf, and the Vendee to pay, becauſe Security abſolute without. 3dly, Quære, If this may not be made uſe of to a general Inconvenience, if the Vendee, having all the Writings and Purchaſe Deeds, is weary of the Bargain, or on other Reſpects ſets up a Title to a Stranger by Colluſion? Nota, in many Caſes it may eaſily be done &c. Ibid. 20.

(U) Covenant that he has full Power &c. to convey &c.

B. need not aver that C. was alive at the Commencement of the Leaſe, or at the Time of the Action brought, nor ſhew who had the Right.

A. Makes a *Leaſe* by Indenture to B. *for 21 Years* if C. ſo long lives; C. is dead at the Time; This Leaſe is abſolute. A. covenants by this Indenture with B. that A. has full Power to demiſe this Land to B. as aforeſaid. In covenant brought by B. againſt A. upon this, he *need not ſhew how A. had not full Power*; it is ſufficient for him to *declare generally* that A. had not full Power; for what Power he had lies in the Knowledge of the Covenantor, and not in Knowledge of the Covenantee. Jenk. 305. pl. 79.

9 Rep. 60, b. 61. Trin. 10: Jac. adjudged in B. R. and that Judgment in Cam. Scacc. Bradſhaw's Caſe. —— Cro. J. 304. pl. 6. Salmon v. Bradſhaw, S. C. adjudged in B. R. and in Cam. Scacc. accordingly.

2. If one enters into Articles to ſell Land, and he had not any good Title at the Time, yet it is *ſufficient if Vendor has a good Title at the Time of the Decree*, the Direction of the Court being in all ſuch Caſes to inquire whether the Seller *can*, but *not* whether he *could* make a Title at the Time of the executing the Agreement; Per the Maſter of the Rolls. 2 Wms Rep. 630. Trin. 1731. Langford v. Pitt.

3. A. articled to ſell to B. but *neither at the Time of the Articles, nor at the Time of a Decree pronounced* thereupon, *could make any Title*, the Reverſion in Fee being in the Crown, and yet the *Court indulged* him with *Time more than once for getting in* this *Title from the Crown*, which could not be effected without an Act of Parliament to be obtained in the following Seſſions; However, it was at length procured, and B. decreed to be the Purchaſor. Cited by the Maſter of the Rolls. 2 Wms Rep. 630. to have been the Caſe of Lord Sturton v. Sir Tho. Meers.

(W) To convey at the Coſts of &c. as Vendee or his Counſel ſhould adviſe.

1. THE Plaintiff covenanted to make an Aſſurance by a Day of Lands, as the Counſel of the Defendant ſhall adviſe; *and on perfecting thereof the Defendant is to pay* 300 *l. and* 300 *l. more, generally within* 3 *Months when demanded. Breach was aſſigned in Non-payment of the whole.* The Defendant *pleads the Plaintiff had no Eſtate which he could convey*, to which the Plaintiff demurred, in regard this Payment is collateral, and the latter is general, without Reference to the to the former; But per Cur. the firſt depending on the Aſſurance, the latter muſt be ſo that is ſubſequent; So *if no Aſſurance, nor Thing is to be paid*, and ſo the Plea of the Defendant is good, although the Plaintiff avers he was always ready to perfect it, and that the Defendant never tendered, nor has paid &c. præter Twiſden, who conceived it is a

at the Defendant's Peril to cauſe an Aſſurance, and if the Plaintiff refuſes for to convey by Fine &c. then he is liable, elſe not; But per Cur. this is good in Action by the Defendant for Non-aſſurance, but here the Action is for the Money, and ſo the Defendant hath Election to plead, as here, or that he tendered ſpecial Conveyance by Advice, and the Plaintiff refuſed; Judgment for the Defendant niſi. Keb. 734, 735. pl. 15. Trin. 16. Car. 2. B. R. Audley v. Berry.

2. There is a manifeſt *Difference* between a Covenant to make a Conveyance *at Charge of Covenantee, and* a Covenant *to convey to Covenantee, and he covenants to be at the Charge of it*; For in the firſt Caſe, Covenantor is not obliged to perform till Tender of the Charges; but in the ſecond he is to convey at his Peril; and if Covenantee will not pay, he has his Remedy againſt him upon his Covenant; but where Covenant is to make Conveyance at Charge of Covenantee, Covenantor ought to give *Notice* to Covenantee *what Sort of Conveyance* he intends to make, that Covenantee may judge what Charge to tender; Per Holt Ch. J. 12 Mod. 400. Paſch. 12 W. 3. Steer v. Shalecroft.

(X) To convey. Notice; in what Caſes to be given.

1. IF covenant be to make a *Feoffment &c. before ſuch a Day*, Covenantor ought to give Notice when he will make it, that Covenantee may be there to receive it; otherwiſe if it be to make a Feoffment *on a Day certain*; but in that Caſe, Covenantor muſt plead a Tender on the laſt convenient Time of that Day; Per Holt Ch. J. 12 Mod. 401. Paſch. 12 W. 3. in Caſe of Steer v. Shalecroft.

2. If *A. covenants with B. to make further Aſſurance to B. at the Coſts of B. A. ought to give Notice to B. what ſort of Aſſurance he will make, and then B. ought to tender the Coſts, and then A. ought to make the Aſſurance*; *But* if the *Covenant* is, *that A. ſhall make a new Demiſe to B. at the Coſts of B.* (as the Covenant, upon which this Action was brought, was) *or any particular Aſſurance ſpecified in the Covenant, then B. ought firſt to tender the Coſts*, and then A. ought to make the Aſſurance; For in the former Caſe B. cannot know what Coſts will be ſufficient to tender, before he knows what ſort of Aſſurance A. will make; but in the latter Caſe, by the Inſpection of the Covenant itſelf, he will know what ſort of Aſſurance will be made. Ruled by Holt Ch. J. upon Evidence at the Trial, at Lent Aſſiſes, at Southwark. 2 Ld. Raym. Rep. 750. March 27. 1 Ann. 1702. Heron v. Treyne.

(Y) That he is ſeiſed in Fee &c. And Pleadings.

1. A. Covenants that he ſeiſed of Black Acre in Fee-ſimple, where in Truth it *was Copyhold in Fee* according to the Cuſtom; Per Cur. *it is no Breach of Covenant*, and the Jury ſhall give *Damages* in their Conſciences according to the Rate that the Country values Fee-ſimple Land more than Copyhold. Noy. 142. Grey v. Briſcoe.

2. *Leaſe*

2. *Leaſe* of a Meſſuage *for Years*, in which the *Leſſor covenanted, that he was lawfully ſeiſed in Fee*; Leſſee brought Covenant, *and aſſigned for Breach, that the Leſſor was not ſeiſed in Fee*, and had a Verdict. It was moved in arreſt of Judgment, that the Breach was too general, becauſe he did not ſhew that any other Perſon was ſeiſed in Fee, nor any Cauſe why the Leſſor was not ſeiſed; Sed non allocatur; For as *the Covenant is general*, ſo *the Breach may be aſſigned generally*; eſpecially ſince in this Caſe where the Defendant by pleading Non eſt factum has made the Declaration good, and ſo allows the Breach if it had been his Deed; And Judgment for the Plaintiff. Cro. J. 369. pl. 3. Paſch. 13 Jac. B. R. Muſcot v. Ballet.

Keb. 58. pl. 22. Glimſton v. Audley, S. C. adjornatur.

3. Debt upon a Bond conditioned to perform Covenants, one whereof was, that the Defendant was ſeiſed of an indefeaſible Eſtate in Fee-ſimple. The Defendant pleaded Performance. The Plaintiff *replied, that he was not ſeiſed of an indefeaſible Eſtate in Fee-ſimple*; The Defendant demurred generally, becauſe he ſuppoſed *the Plaintiff ought to ſhew of what Eſtate the Defendant was ſeiſed*, becauſe he had parted with all his Writings to the Plaintiff, who muſt therefore well know the Title, and it is not like **Bradſhaw's Caſe**, becauſe there the Covenant was with the Leſſee for Years, who had not the Writings, but adjudged that the Breach was well aſſigned according to the Words of the Covenant. Raym. 14. Paſch. 13 Car. 2. B. R. Glinifter v. Audley.

(Z) For quiet Enjoyment. And Pleadings.

1. COvenant was brought *by the Leſſee againſt the Leſſor*, becauſe the *Leſſor after the Leaſe made a Feoffment to one who ouſted the Leſſee*, and it was awarded that it lies well; Quod Nota; and yet the Leſſee *might have had Re-entry*, or have *had Quare ejecit* infra Terminum by the Statute, and yet this does not toll the Action of Covenant which is given by the Common Law, notwithſtanding that Quare ejecit infra Terminum is given by the Statute; but Brooke makes a *Quære, if he cannot recover againſt the Leſſor by the one Writ, and againſt the Feoffee by the other Writ*; for he may recover by two Quare Impedits of one Avoidance. Br. Covenant, pl. 7. cites 46 E. 3. 4.

2. Covenant that Leſſor *might be* 4 *Days a Year in the Houſe without being put out*, on Pain of 100 l. The Leſſor came to enter, and *Leſſee ſhut the Doors and the Windows*. This was held to be no Breach of Covenant without ſaying that the Leſſee put him out; Arg. Godb. 75. cites 3 H. 4. 8. Br. Condition, 35.

3. If a Termor be *ouſted by him who has no Right*, he ſhall not have Covenant againſt the Leſſor, for he *may have Ejectione Firmæ*; but if he be ouſted by him who has Right, there lies Writ of Covenant. Br. Covenant, pl. 20. cites 22 H. 6. 52.

4. If *Diſſeiſor leaſes* the Land by Deed *with Warranty*, and the *Diſſeiſee re-enters*, Writ of Covenant lies; *Contra if a Stranger enters*. Br. Covenant, pl. 40. cites 26 H. 6.

5. In Debt, if the Defendant pleads Condition or Defeaſance, *that he and his Feoffees permit N. N. Plaintiff to enjoy two Houſes in D. for 20 Years*, that then &c. It ſuffices *to ſay that he and his Feoffees ſuffer'd him to enjoy them* &c. *without ſhewing the Names of the Feoffees*, becauſe Sufferance is no Act; But if it was that he and his Feoffees ſhall make Eſtate,

ſtate, there it is Contra; For this is an Act; Note the Diverſity; Per Cur. Br. Conditions, pl. 157. cites 17 E. 4. 2.

6. Bond was continued to ſurrender certain Copyholds, and to ſuffer him and his Heirs quietly to enjoy the ſame without Interruption of any; the *Defendant pleaded Performance, and that the Plaintiff continued peaceably in Poſſeſſion*, for a certain Time, according to the Condition; *but that afterwards the Rent being arrear, the Lord entred for a Forfeiture according to the Cuſtom.* This was held a good Plea, ſo if he was Tenant at Common Law, and the Obligee ceaſed, the Obligation is ſaved; becauſe it was the Act of the Plaintiff himſelf. Dyer 30. a. pl. 205. 28 H. 8. Anon.

7. In Debt upon Bond; the Condition was, that whereas W. the Obligor had ſold a certain Meadow to G. the Obligee, *that he would warrant the ſame againſt the King, Lord, and all others, and that he ſhould enjoy the ſame peaceably* to him and his Heirs to hold of the Lord of W. by the Services thereof, according to the Cuſtom of the Manor. The Defendant *pleaded, that the Meadow was Copyhold*, Parcel of the Manor of B. the Cuſtom whereof was, that if the Rent be in arrear &c. the *Lord might enter for a Forfeiture*, and that G. was admitted to him and his Heirs, and had peaceably enjoy'd the Lands, and died ſeiſed, and that the ſame deſcended to his Son who *did not pay the Rent*, and thereupon the Lord entred for a Forfeiture; and upon a Demurrer to this Plea all the Juſtices agreed, that when a Man binds himſelf and his Heirs to Warranty, they are not bound to warrant new Titles of Actions accrued by the Feoffee, or any other after the Warranty made, but only againſt ſuch Titles as were then in Eſſe at the Time of the Warranty, and therefore, becauſe the Title to enter, given to the Lord by the Cuſtom for Non-payment of Rent, accrued after the Warranty, the Defendant was not bound to warrant againſt it. Dy. 42. Mich. 30 H. Greenliff's Caſe.

8. Bond for quiet Enjoyment, as that Leſſee ſhall take, reap, and carry away his Corn peaceably, without Interruption; Leſſor coming on the Land in Harveſt when Leſſee is reaping, and *ſaying that he ſhall not reap any Corn there*, though he reaps and carries away, yet it is a Forfeiture. Godb. 22. pl. 30. Hill. 26 Eliz. C. B. Anon.

9. Leaſe for 6 Years with a Covenant that Leſſee ſhould *enjoy it quietly during the Term diſcharged of Tithes*, and that if Tithes ſhould be recovered, he ſhould recoupe in his Hands the Value of the Tithes ſo recovered. Covenant lies againſt Leſſor if *Leſſee is uſed for the Tithes after the Leaſe ended*, for that *is within the Intent* of the Covenant; Per tot. Cur. Cro. E. 916. pl. 7. Hill. 45 Eliz. B. R. Lanning v. Lovering.

10. In Debt on *Bond to perform Covenants*; the Covenant was for quiet Enjoyment, without Let, Trouble, Interruption, &c. The Plaintiff aſſigned the *Breach, that the Defendant forbad the Tenant to pay Rent to the Plaintiff*. The Court held this to be no Breach, unleſs there were ſome other Act; And the Defendant pleaded, that after the Time the Plaintiff ſaid, that the Defendant forbad the Tenant to pay the Rent, the Tenant paid it to the Plaintiff. Brownl. 81. Trin. 9 Jac. Whitchcot v. Lindſey.

11. Debt upon *Obligation* upon a Condition, that where the Plaintiff had a *Leaſe for Years* from the Leſſor of certain Land, that the Leſſee *ſhould enjoy* this Land *during this Leaſe without Eviction*; the Breach was alleged in the Replication, in a *Recovery* of this Land by A. *by Verdict*, and *upon a good Title*; the *Iſſue was, that the Recovery was by Covin*; and it was found for the Plaintiff; he had Judgment, which was reverſed in the Exchequer-Chamber; For A. *might recover* this Land by Verdict, and without Covin, *under a Title derived from the Plaintiff himſelf*; therefore the Plaintiff *ought to ſhew that A. had an elder Title* to the ſaid Leaſe made to the Plaintiff. Jenk. 340. pl. 45.

12. In Actions on Breach of Promiſe or Covenant for Enjoyment &c. againſt Incumbrances, the Plaintiff ought to *ſhew a lawful Incumbrance.* Cro. J. 425. Paſch. 15 Jac. B. R. Broking v. Cham.

13. The Leſſor made a Leaſe for Years, and *covenanted that neither he nor his Executors, or Heirs, ſhould interrupt the Leſſee, but that he ſhould quietly enjoy during the Term.* In an Action of Covenant brought for the Entry of the Executors, it was adjudged that the *Plaintiff need not ſhew that the Executors entred* by an elder and good Title, for as to the Plaintiff it is all one, whether the Action is brought againſt the Covenantor or his Executors, *but if the Entry had been by a Stranger,* then *he muſt ſet forth an Entry by an elder and good Title.* 2 Roll Rep. 21. Paſch. 16 Ja. B. R. Forte v. Vines.

14. G. L. brought an Action of Covenant againſt N. M. and declared that *C. C. had granted the next Avoidance of the Church of D. to T. M.* and that *N. M. was his Executor, and* that N. M. *aſſigned this to G. L. his Executors, and Aſſigns, to preſent to the ſame Church when that ſhall become void, and covenanted that the ſame Perſon, who ſhall be ſo preſented by him, ſhall have and enjoy that without the Let or Diſturbance of the ſaid C. C or N. M. or any of them, or any by their Procurement*; and after *G. L. preſented J. S.* and after *J. W. preſented another, claiming the firſt and next Avoidance by the Procurement of C C.* and ruled that Declaration was not good; for it *ought to ſay that C. C. granted to J. W. the next Avoidance, and procured him to diſturb, and that by his Procurement he was diſturbed*; Athow ſaid, it ſeems to me to be but little Difference to ſay he diſſeiſed me by the Procurement of J. S. and he commanded J. S. to diſſeiſe me, and he did that accordingly at his Command. Win. 4 Paſch. 19 Jac. Lewings v. March.

15. Leaſe for Life by A. to B. A. covenants for him and his Heirs, that he would ſave B. harmleſs *from any claiming by, from, or under him.* A. died. A's *Wife brought Dower, and recovered.* B. brought an Action of Covenant againſt the Heir; Adjudged againſt the Heir, becauſe the Wife claimed under her Husband who was the Leſſor; *but if the Woman had been Mother of A.* the Action would not have lain againſt the Heir, becauſe ſhe did not claim by, from, or under A. Godb. 333. Trin. 21 Jac. and ſays it was ſo adjudged 11 H. 7. 7. b.

16. In an Action of Covenant to perform Articles, which were, that the Plaintiff ſhould hold and enjoy Lands free from all Titles and Incumbrances, and for Breach the *Plaintiff ſheweth that B. died ſeiſed, and that his Wife had Title to Dower,* to which the Plaintiff demurred; and per Cur. this Covenant goes to the Land, and there can be no Difference between a Covenant to diſcharge the Land of all Titles, and that the Defendant ſhall hold the Land ſo diſcharged; Judgment for the Plaintiff Niſi. Keb. 937. pl. 53. Trin. 17 Car. 2. B. R. Andrews v. Turner.

17. If a Man ſells Land with a Covenant for quiet Enjoyment *without any Diſturbance* &c. theſe Words muſt be intended a *lawful* Diſturbance. Vaugh. 119. 122. Paſch. 21 Car. 2. C. B. in Caſe of Hayes v. Bickerſtaff.

Cited S. Mod. 230. Arg.—*But* where the *Leſſor is himſelf the Diſturber* the Court will not conſider the Word Lawful, nor drive the Leſſee to bring an Action of Treſpaſs, but he may maintain his Action of Covenant. 2 Show. 427. Paſch. 1 Jac. 2 B. R. Croſs v. Young —Where the Words of Covenant were, that he ſhould quietly enjoy two Cloſes *againſt all claiming or pretending to claim any Right in them.* This extends to all Interruptions whatſoever. 10 Mod. 384 Hill. 3 Geo. 1. B. R. Chaplain v. Southgate.

18. But per Vaughan. If the Covenant be expreſs that he ſhall enjoy his Term *without the Interruption of any,* whether ſuch Interruption be *lawful or tortious,* there the Leſſor ſhall be charg'd for the tortious Entry of a Stranger, becauſe the Covenant can have no other Meaning. Ibid. 119.

19. The

19. The Defendant covenanted *that the Plaintiff ſhould enjoy Black-Acre without any lawful Let, Suit or Interruption, immediately after the Death of Z.* and the *Plaintiff ſhews* in his Declaration *that the Lands were part of the Dutchy of Cornwall and did belong to the King; and that he by his Letters Patents had convey'd them to J. S.* &c. The Defendant *demurred becauſe the Plaintiff did not allege an Entry*, and ſo could not be diſturbed. Per. Cur. the Declaration is good enough, for having ſet forth a Title in the Patentee of the King, the Plaintiff ſhall not be enforced to enter, and ſubject himſelf to an Action by a tortious Act. Judgment for the Plaintiff. Freem. Rep. 122. pl. 143. Trin. 1673. Cloake v. Hooper.

20. The Defendant leaſed Lands to the Plaintiff, and promiſed *that he ſhould enjoy it quietly, without Interruption of any Perſon*; and the *Plaintiff ſhews an Interruption, but doth not ſhew any Title in the Interruptor, nor any lawful Interruption.* The Court gave Judgment for the Plaintiff, upon the Authority of Dyer 328. and Hob. 35. And Wyld ſaid, that where in a Deed a Man *covenants, that he hath a good Right to convey, &c. and that the Party ſhall quietly enjoy, one Covenant goes to the Title, and the other to the Poſſeſſion.* Freem. Rep. 450. pl. 612. Paſch. 1677. Anon.

21. In Covenant the Plaintiff declar'd on a *Demiſe of a Meſſuage to the Defendant* together *with a Garden, and an Houſe of Office at the upper end* thereof, *and covenanted for Enjoyment of the Premiſſes ſo demiſed*, and aſſigns a *Breach, that the Defendant had built a Houſe on part of the Garden, whereby the Plaintiff could not have the Uſe of the Garden, according to the Form and Effect of the Demiſe*; the Defendant pleaded, that notwithſtanding the ſaid Building, the Plaintiff might have the Uſe of the Garden according to the true Intent of the ſaid Demiſe, and *traverſed, that the Building did hinder the Plaintiff from the Uſe thereof, according to the true Intent of the ſaid Indenture*; and upon Demurrer it was adjudged, that the Uſe of the Garden is the Uſe of the whole Garden, and not a Paſſage only to the Houſe of Office; and the Traverſe is of more than alleged in the Breach Secundum veram Intentionem of the ſaid Indenture, and the Court cannot underſtand the true Meaning of the Indenture but only by the Words in it; and Judgment for the Plaintiff. 3 Lev. 167. Trin. 36 Car. 2. C. B. Kidder v. Weſt.

22. A *Suit in Chancery for Waſte* tho' groundleſs, is no Interruption or Diſturbance within the Covenant for quiet Enjoyment *without any manner of Interruption*, it not touching the Leſſee's Eſtate or Title. 2 Vent. 214. Mich. 2 W & M. in C. B. Morgan v. Hunt.

23. All which ſaid *Profits, Salaries, Penſions &c. of the ſaid Office I do hereby engage my ſelf, that* the ſaid A. *ſhall receive and enjoy during his Life, and that I will not receive any Part thereof during A's Life.* This was a Covenant from one that was admitted to an Office to him that reſign'd the ſame. The Court of Common Pleas were of Opinion that this Agreement did not bind the Covenantor to *pay the Money*. But Holt Ch. J. and Eyre doubted of that Matter; But all agreed that A. muſt ſhew for Breach that he could not receive any of the Money. Carth. 189. Mich. 3 W. & M. in B. R. Killigrew v. Sayer.

2 Vent 79. S. C. in C. B. — 4 Mod. 43. in B. R.

24. Covenant in an aſſignment of a Leaſe, *that the Aſſignee ſhould quietly Enjoy &c. free and clear of and from all Arrears of Rent*; the Breach aſſigned was, that the *Rent was arrear*, and not paid; the Defendant *pleaded that he left ſo much Money in the Hands of the Plaintiff, ea Intentione to pay it over to the Leſſor in diſcharge of what Rent was then arrear* &c. And upon a Demurrer this Plea was held good notwithſtanding the Objection, that the Intention was put in Iſſue; for if it been Ad ſolvendum, it would have been good, and in this Caſe the Plaintiff

Skinn. 397. pl. 31. S. C. held accordingly. — 1 Salk. 196. pl. 2. S. C. the Court inclined that the Plea was good,

but held clearly that if it had been reliquit ad ſolvendum it had been good, and that Non reliquit Modo & Forma had been a good Traverſe.

Plaintiff might have replied, Non reliquit &c. in manibus ſuis ad ſolvend', &c. 4 Mod. 249. Mich. 5 W. & M. in B. R. Griffith v. Harriſon.

25. Vendor covenanted that Vendee ſhould enjoy, *quietly and clearly acquitted of and from all Grants &c. Rents, Rent-charges &c. whatſoever.* An annual Rent of 11 s. 6 d. was payable thereout to the Lord of the Manor, as a *quit Rent incident to the Tenure of the Lands* ſold. This, tho' there were no Arrears due of the ſaid Quit Rents, was held per tot. Cur. clearly a Breach of Covenant, and Judgment accordingly. Comyns's Rep. 180. Trin. 8 Ann. Hammond v. Hill.

10 Mod. 383. Hill. 3 Geo. 1. B R. Chaplain v. Southgate. S. C. accordingly, and the Court ſaid, that ſo was the plain Intent and Meaning of the Parties; For if it was to extend to legal Claims only, then the Tenant would be put under the Hardſhip of trying the Right for the Landlord; which was the very Thing the Tenant plainly deſign'd to prevent by this Covenant.

26. A Covenant to enjoy *without Diſturbance generally* ſhall be conſtrued *a Diſturbance by legal Title, but where a Man covenants expreſsly againſt thoſe who claim or pretend to have a Right*, the Breach is well aſſigned tho' the Diſturber has no legal Right. Comyns's Rep. 23. pl. 127. Mich. 2 Geo. C. B. Southgate v. Chaplin.

27. A. Covenants that B. ſhall quietly enjoy, *and that he will not do any Thing to moleſt*, hinder &c. *Setting up a Gate croſs a Lane, through which there was a Way* to the Land, is a Breach; Adjudg'd in C. B. and affirm'd in B. R. It was urged for the Plaintiff in Error, that nothing appear'd in the Replication to ſhew that the ſetting up the Gate was unlawful; for there may be another Way which might make it neceſſary and lawful to ſet up a Gate. But per Cur. this appearing to be *a neceſſary Way* for the Enjoyment of the Cloſe it is not material to B. whether it is ſet up by Right or Wrong. For in either Caſe, if it is an *Obſtruction*, it ought not to be erected there. 8 Mod. 318. Mich. 11 Geo. Andrews v. Paradiſe.

(A. a) That it is clear of, and diſcharged of Incumbrances, and ſhall be ſaved Harmleſs.

1. IF a Man be bound *to make a Feoffment of certain Land diſcharg'd*, and after makes the Feoffment, and *Seigniory is iſſuing* out of it, yet the Bond is not forfeited; For this is a Thing of common Right. Br. Conditions. pl. 126. cites 3 H. 7. 14.

2. The Earl of H. covenanted with the Lord C. to make him a good ſure ſufficient and lawful Eſtate in Fee-ſimple of the Manor of D. before Eaſter, *diſcharged of all former Incumbrances except Leaſes, where upon the ancient Rent*, or more *is reſerved*; after, and before the Feoffment *he made a new Leaſe rendring the ancient Rent*. By the Opinion of 4 contra 2. is no Breach. Dy. 139. pl. 34. Hill. 4 P. & M. Huntington v. Clinton.

3. A. bargained and ſold Land, and covenanted that it ſhould be diſcharged of all Charges. *He had granted a Rent* before *to begin* 20 *Years after*; when the Rent begins it ſhall be ſaid a Breach. Arg. Goldsb. 59. cites it as adjudged in 8 Eliz.

4 A Man *levies a Fine* of certain Land, and after *covenants* that the Land is diſcharg'd of all Acts and *Incumbrances* done by him, and in Truth

Truth the *Poſt-Fine was not paid.* Per Dier it is clear that the Covenant is broken; For all the Lands of him that levies the Fine are *chargeable* for the Poſt-Fine, and eſpecially this Land of which the Fine was levy'd. Dal. 78. pl. 11. 14 Eliz.

5. Covenant &c. upon an *Indenture reciting a Leaſe made by D. B. of a Meſſuage, &c. in which* Indenture the *Defendant covenanted, that the Original Leaſe was good and not incumbred*; then he aſſigned the *Breach, that A. and B. claim'd a Title under the Defendant to part of Premiſſes, by Virtue of a Leaſe which he made to them*; the Defendant *pleaded as to Parcel, that A. and B. had no Title under him, and as to the Reſidue, that the Plaintiff had Notice of the Leaſe before the Defendant aſſigned the Original Leaſe to the Plaintiff, and that after the Death of A. the other Tenant B. attorned Tenant to the Plaintiff*, upon Demurrer to this Plea the Plaintiff had Judgment. 1 Lutw. 317. Levett v. Witherington.

(B. a) That the Lands are or ſhall be of ſuch a Value. Extent thereof.

1. A Covenant that *Lands limited in Jointure with ſeveral Limitations over*, ſhall continue for ever of the Annual Value of 200 l. *extends to all the Limitations as well as to the Jointure Eſtate.* Lord Raym. Rep. 365. Mich. 10 W. 3. Anon.

2. *If H. Limits an Eſtate to A. for Life Remainder to B. for Life, Remainder to the 1ſt. 2d. &c. Son of their 2 Bodies,* Remainder *to his own Right Heirs, with ſuch a Covenant* annexed to it, that the Lands ſhould be and for ever continue of the Value of 200 l. a Year, *it will extend to the Eſtates for Life, and the Eſtates Tail; but if for Default of Iſſue of the Bodies of A. and B the Reverſion deſcends to the collateral or lineal Heir of H. he ſhall never take advantage of it,* becauſe he is *not privy to the conſideration* of the Deed *nor party* to the Deed, *nor is his Eſtate raiſed by the Deed. But if* in ſuch Caſe *the Remainder had been limited to the right Heirs of A. or B. or of J. S.* they might ſue upon this Covenant becauſe they had taken by the Limitation of the Deed, and are privy to it. Per Holt Ch. J. Lord Raym. Rep. 366. Mich. 10 W. 3. Anon.

(C. a) Where it reſtrains the Generality of the Grant &c. the Covenant being particular, and referring to Words, viz. until &c. ſhewing the Intent.

1. A. Is bound to B. to make him a *ſure and ſufficient Eſtate* of the the Manor of Dale *by the Advice of J. S.* If J. S. adviſes the Eſtate, and it is not ſufficient, yet the Obligation is ſaved; by the Juſtices of both Benches; Qui amat periculum in Periculo peribit. If the Condition of the Obligation had been to make him a *ſure Eſtate*; the Obliger is to do it at his Peril. If it be to make a ſure Eſtate *as* the *Obligee or his Counſel ſhall adviſe*, the Obligee ought to certify what Eſtate he will have, and if it be not ſure, yet the Obligation

5 Rep. 23. b in Lamb's Caſe, cites S. C. & S. P.

tion is not forfeited; for it is left to the Judgment of the Obligee and his Counsel to advise a sure Estate. Jenk. 128. pl. 60. cites 7. E. 4. 13

Cro. E. 674. S. C. & S. P. held by Popham; but Judgment was given on the Pleading.

2. In a *Lease by Demise, Grant &c. there was a Covenant for Lessee's Quiet Enjoyment without Eviction by Lessor or any claiming under him*; It was held by Popham Ch. J. and the whole Court, that *the said Express Covenant qualifies the Generality of the Covenant in Law*, and restrains it by the mutual Consent of both Parties that it shall not extend further than the Express Covenant; For *Clausula Generalis non refertur ad expressa*. 4 Rep. 80. a. Trin. 41 Eliz. Nokes's Case, alias, Nokes v. James.

Cro. E. 809. pl. 13. S. C. adjornatur. ——Cro. J. 233. pl. 2. S. C. adjornatur. ——Bulst. 2. S. C. adjudged in C. B. and Judgment affirm'd in B. R. by 4 Judges against one. —2 Brownl. 212. Procter v. Johnson, S. C. adjudged Nisi &c.

3. A. and B. *Jointenants for Years of a Mill*; *A. grants his Moiety to J. S. and dies*; *B.* not knowing of the Grant by A. and so thinking himself intitled to the whole as Survivor *grants the Mill*, Lands &c. and all his Estate, Title &c. in it to J. N. and *covenants that J. N. shall enjoy for any Act by him* &c. J. S. evicted J. N. of a Moiety; adjudg'd and affirmed in Error that Covenant lies. For this Case is not like to Nokes's Case 4 Rep. 80. b. For there the *Grant* was *once good for the whole* and became ill by Eviction afterwards, and therefore the Covenant ensuing qualified the General Covenant. But here the Grant according to the Purport of it *never was good*; For B. had no Power to grant the Moiety of A. that being granted away by A. to J. S. and yet in B's. grant to J.N. he has expressly granted the Mill, and Land &c. so that the Grant being *Defective at first as to a Moiety*, which is the Substance and Agreement of the Parties, this does not qualify the General Covenant. Per tot. Cur. Yelv. 175. Pasch 5 Jac. B. R. Johnson v. Proctor.

and nothing was said. —— S. C. cited by Yelverton J. as a Case in which he was of Counsel. Litt. Rep. 205, 206. Mich. 4 Car. ——S. C. cited Arg. 2 Show. 430.

4. Tenant in Fee-simple *grants* 100 *Trees to B. and covenants that B. may take them within 5 Years*; the Grant implies an absolute Liberty to B. to take; but if the *Covenant were on the Part of B. not to take after* the 5 Years it would not extinguish his property, nor consequently his Power to take them after the 5 Years, and therefore if he took them he might plead Not-Guilty in Trespass but should be answerable to an Action of Covenant for it; Per Hobert Ch. J. Hob. 173. Hill. 12 Jac. in Case of Stukely v. Butler.

5. Condition was that *if A. shall truly exercise his Office of &c. and also shall Quarterly make his Account of all Monies by him receiv'd for Customs, and Pay all Monies by him receiv'd, and do Account at such Times as he shall be thereunto reasonably requir'd* that then &c. the Clause of *reasonably Requir'd* goes only to the Payment of the Money being the last Antecedent, and also the Account is limited to be made Quarterly and express'd by Words, and therefore the Words can't extend to it. Litt. R. 101. Trin. 4 Car. in Scacc. The King v. Points.

6. In Covenant the Plaintiff declared, that the *Defendant sold Lands* to him which he had *Purchased of one Woolaston, a Trustee for the Sale of Delinquents Estates*, and *covenanted, that he was seised of a good Estate in Fee according to the Indenture made to him by Woollastone* and assigned the Breach, that he was not seised of a good Estate in Fee; the Defendant pleaded, that he was seised of as good an Estate as Woolaston &c. conveyed to him; The Plaintiff Demurred and had Judgment; for the Covenant was absolute that he was seised of a good Estate in Fee, and the Reference to the Conveyance by Woolaston serves only to the Limitation

Limitation and Quantity of the Eſtate, and not the Defeaſibleneſs or Indefeaſiblenes of the Title. Lev. 40. Trin. 13 Car. 2. B. R. Cook v. Founds.

7. The Defendant *granted a Fee-Farm Rent to the Plaintiff*, and covenanted that he was ſeiſed in Fee, and had good right to ſell; and in an Action of Covenant the Plaintiff aſſigns the *Breach, that the Defendant had no good right to Sell, he having Purchaſed it of the late Truſtees for the Sale of the King's Lands, pleaded that it was farther agreed in the Indenture, that all the Covenants therein ſhould not extend farther than to Acts done by the Vendor and his Heirs*; whereupon the Plaintiff Demurred and *though it was placed at the end of the Indenture far diſtant from the other Covenants it was adjudged, that this had qualified the firſt Covenant, and reſtrained it to Acts done by the Covenantor.* Lev. 57. Hill. 13 & 14 Car. 2. in B. R. Brown v. Brown.

8. *Leſſor of certain Gravel-pits* in Black-Acre *covenanted that he his Heirs, Aſſigns or Undertenants would not dig or ſell any Gravel there.* In Covenant brought by the Leſſee he aſſign'd the Breach, that *J. S. an Undertenant dug and ſold Gravel in other Pits in Black-Acre.* It was objected that Covenant extended only to the Pits demiſed; but the Court held that it ought to be intended of other Pits in the Cloſe and not of thoſe demiſed to the Plaintiff, and Judgment for the Plaintiff. Lev. 144. Mich. 16 Car. 2. B. R. Burman v. Aſton. Keb. 775. pl. 11. S. C. Adjornatur.

9. A *prior Covenant ſhall not be reſtrained by a ſubſequent one when they make but one intire Sentence*, and not diſtinct Covenants, in which Caſe the Conſtruction muſt be upon the whole Sentence. Saund. 58. Paſch. 19 Car. 2. Gainsford v. Griffith.

10. *So where there are reſtrictive Words at the end of the laſt Sentence, and may be indifferently applied to both the* Precedent Sentences. Ibid.

11. *And a general Covenant in Law may be reſtrained by a Particular Covenant in Fact.* Ibid.

12. Again if a *reſtrictive clauſe* be *in the firſt or the laſt Part of a Sentence*, or at the beginning of the firſt or at the laſt Sentence, which in good ſenſe may be applied either to the one or the other, there it ſhall extend to both Sentences. Ibid.

13. *But if* ſuch a Sentence be *placed in the Middle of one or both* Sentences, Contra. Saund. 60. Paſch. 19 Car. 2. Gainsford v. Griffith.

14. In the Condition of a Bond *to perform Inſtructions in a Paper annex'd* &c. *reciting, that whereas Lord A. had deputed J. Deputy Poſt-Maſter of the Stage of O. to execute the ſaid Office for 6 Months, if the ſaid J. ſhall for and during all the Time that he ſhould continue Poſt-Maſter* &c. *perform the Inſtructions in a Paper thereunto annex'd* &c. Here, though the Words (during all the Time &c.) are indefinite, yet by the Intention of the Condition the Obligor is not to be anſwerable for T. for any more Time than the 6 Months; the Condition ſhall refer to the Recital only. So in a Condition it was recited, that a Sheriff had conſtituted ſuch a one to be Bailiff of a Hundred &c. if therefore the ſaid Defendant ſhould execute all Warrants to him directed then &c. Warrants here are only ſuch as were directed to him as Bailiff of the Hundred, and not other Warrants. 2 Saund. 413, 414. Paſch. 23 & 24 Car. 2. Lord Arlington v. Merrick. 3 Keb. 45. pl. 21. S. C. Judgment for the Defendant Niſi —— Ibid. 59. pl. 40. S. C. it is apparent that the Deputation was but for ſix Months, and the Security was bound no longer; and had it been during the Continuance of the ſaid Deputation it had been out, and here it is all one; and Judgment for the Defendant.

15. Where the *Generality of the Covenants were reſtrained to Acts of his own*, but there was *one Covenant abſolute*, as that he had good and lawful Power to graht &c. which was *contrary to the Intent of the Parties* and the Tenor of the Deed, it was relieved. Fin. R. 90. Hill. 25 Car. 2. Feilder v. Studley.

16. Charles

MS Rep. 16 June, 1735, Chichester v. Bradford & Ux'.

16 Charles Harward in Conſideration of Marriage, and Marriage Settlement, *covenants* "That he the ſaid Charles Harward ſhall and "will, *by Deed or Deeds in his Life-time, or by his Will, give, grant,* "*convey, ſettle or deviſe for ever, all other his Lands &c. and all Right,* "*Title &c. after his and his Wife's Death, unto the ſaid Katherine his* "*Daughter, and ſuch Child or Children of her the ſaid Katherine his* "*Daughter by A C. her intended Husband, to be begotten in ſuch Manner* "*and Proportion as to him the ſaid C. Harward ſhall ſeem meet, and ſhall* "*not, neither will, give or grant to the ſaid Katherine his Daughter any* "*further or other Eſtate therein than for her Life; provided that the ſaid* "*Katherine, or any Child or Children of the ſaid Katherine, by the ſaid* "*A. C. to be begotten, ſhall be living at the Time of the Death of him the* "*ſaid Charles Harward, and not otherwiſe.*"

Lord Chancellor ſaid, The firſt Thing is as to the Conſtruction of the Covenant; The next Thing is as to the Rents and Profits of the Eſtate of Charles Harward.—By the Covenant he put himſelf under an Obligation to diſpoſe of the whole Eſtate ſubject to the Eſtate for Life to his Wife.

By the Will he gives the whole Eſtate to Truſtees and their Heirs, to the Uſe of his Grandſon for Life, Remainder to his firſt and other Sons in Tail, then to his Grand-daughter, and the Heirs of her Body, Remainder to his own right Heirs, i. e. to his Daughter, who is his Heir at Law. He directs that his Truſtees ſhould preſent ſuch Perſon to the Church of Tallerton as his Daughter ſhould appoint. All the Benefit that his Daughter was to have out of his Eſtate, was the next Preſentation to Tallerton as his Daughter ſhould appoint, (probably he intended the ſecond Husband) and the Remainder in Fee, although ſhe took the ſame by Deſcent, not properly by the Deviſe.—And what ariſes by this Covenant?

On this Covenant there are two Queſtions:

1ſt. Whether Charles Harward was under a Neceſſity of giving any Thing at all to his Daughter? if not under a Neceſſity, whether the Diſpoſition he had made in Favour of his Grand-children was good or not? And then another Queſtion, that ſuppoſing he was under a Neceſſity of giving ſomething to his Daughter, what that ſomething was? Whether ſhe was to have an Eſtate in the whole, or whether it was in his Power to adjuſt the Proportions between her and her Children, and leave her ſome minute Thing or Part?

The Words are, unto Catherine his Daughter, and ſuch Child or Children, and if the Word (or) disjoins the whole, then it is clear he had an Election to give to any Child, or to all the Children excluſive of the Daughter, and it would be equally clear to give it to the Daughter, excluſive of the Children, were it not for the reſtrictive Words, which exclude him from giving her a greater Eſtate than for Life.

In the Caſes mentioned, (to wit) Co. Litt. 225. a. 1 Le. 74. Mo. 239 the Rule is laid down generally, (See the Books) but Caſes may happen from the different Penning of the Clauſes, where the Intent of the Parties may appear ſo clear, that a Conjunctive ſhall ſtand for a Disjunctive, and a Disjunctive for a Conjunctive, but the Court ought not to do Violence to the Words where there is not any Thing in them to take away the natural Senſe and Meaning of thoſe Words.

In this Caſe, if the Words had been only to the Daughter, and to ſuch Child &c. as to him ſhould ſeem meet, then the Daughter muſt have had ſomething; but the Word (or) afterwards makes the Difficulty.

If the Words had been, I give to my Daughter, and ſuch Child of my Daughter &c. as he ſhould think fit, or to my Daughter and the Children of my Daughter, there would be no Neceſſity there ſhould be a Conſtruction to vary the Words, or put (or) for (and) but here there

there is no Violence done to the Words to uſe the whole in the Disjunctive, it may be taken in that Senſe, and therefore he rather thought they would be taken in the disjunctive Senſe throughout.

Provided that the ſaid Katherine, or any Child or Children &c. What Event was here to be provided for? If the Daughter, or any Child or Children were living, the Proviſion was to take Place.

If in the Beginning the Words are to be taken in the Conjunctive, ſo as to oblige him to give ſomething to the Daughter, then the laſt Words, which are plainly in the Disjunctive, would bind him to convey to his Daughter though his Daughter was dead. Another Reaſon why he thought the Words ſhould be taken in the disjunctive Senſe was, from the other Proviſion that was made, that he ſhould not, nor would give or grant to his Daughter any further or other Eſtate than for Life.—He is bound to make a Diſpoſition of the whole; he might give the whole to his Daughter, but that was not his Meaning.—This is put upon him by negative and reſtrictive Words—The Family, not the Daughter only, but the Iſſue of the Marriage, was chiefly under the Conſideration of the Parties.

With regard to the Daughter, he might chuſe whether he would or would not give any Thing to her, but he might her an Eſtate for Life if he thought fit.

Another Reaſon, and that is from the whole Tenor of the Covenant. If the Words (in ſuch Manner and Proportion as he ſhould ſee meet) refer to the Children only, and the Power of Diſpoſition is not over the Whole, and the Daughter muſt have an Eſtate for Life in the whole in all Events, it would be an abſurd Proviſion to ſay, I give to my Daughter, or her Child or Children &c. provided that I do not give her more than an Eſtate for Life, is plain, if not, to put them all under one Reſtriction, that Negative is far from affording an Argument for the Conſtruction contended for, for the Event was uncertain whether ſhe ſhould have Children or not.

But if the Daughter was under the Power of her Father, he might give her as minute a Part as he thought fit, if he was under a Neceſſity of giving ſomething to her, what that was to be was in his Diſcretion, but not more than an Eſtate for Life.—A further Reaſon for taking the Words in the Disjunctive is, that it ſeems to have been the Intent, and to be ſtipulated that he might give to one, or 2, or to 3 &c. in ſuch Proportion as he thought fit.

But he relied chiefly upon the Words of the Proviſo (provided that ſaid Katherine, or any Child or Children &c.)—The Authorities ſeem to warrant this disjunctive Senſe, but the Reaſon of the Thing that ariſes from the ſame Place and Words doth warrant this Conſtruction. And as to the negative Words, that he ſhould not, nor would give or grant any further or other Eſtate, do refer to the ſubſequent Words (for her Life.) It was to be left in Doubt, whether ſhe ſhould have even that, or not, and the other Clauſes will fall in with it when the Whole is taken disjunctively.—He has done as far as he was bound to do, he was obliged to convey the Inheritance for ever, he has by his Will given to his Grandſon an Eſtate Tail, Remainder to his Grand-daughter in Tail, Remainder to his right Heirs.

His Lordſhip's preſent Thoughts were, that Charles Harward had underſtood the Covenant in the right Way, that he would not take any Thing from the Grand Children which he had given them, but the Rents and Profits are to go for the Benefit of the Plaintiff Charles; And decreed accordingly.

(D. a) Negative and Affirmative Covenants. Conſtruction and Pleadings.

1. *Affirmative* Covenants do not *take away the Power which the Law gives*; As where Leſſor covenants that Leſſee may take Hedgeboot &c. by Aſſignment, yet he may take it without Aſſignment; Arg. Cro. J. 481. cites D. 19. [b. pl. 115. &c. Trin. 28 H. 8. Anon.]

Hob. 173. cites S. C. that Leſſee may take it without Aſſignment, but otherwiſe had it been in the Negative.

2. Leſſor covenanted *that Leſſee ſhall have ſufficient Hedgeboot by Aſſignment of the Leſſor's Bailiff*; Bauldwin and Fitzherbert held that he may take it without Aſſignment; For the Law by Implication gives it to him, but Shelly e contra. D. 19. b. pl. 15. 28 H. 8.

Ibid. Marg. pl. 117. cites Mich. 40 & 41 Eliz. C. B. Brown v. Eyre, where the *Lord granted to the Termor to take Boote per Viſum Cuſtodis*, and there Anderſon held, that *this being in the Affirmative the Law* clearly *does not take away the Liberty given to the Termor by the Law*, but that he may well take without View of the Keeper, Quod Glanvil conceſſit, unleſs it be according to 29 E. 3. 91. quod non liceat capere niſi per Viſum Cuſtodis &c.

3. If A. *leaſes 2 Acres of Meadow to B. and covenants that it ſhall be lawful for B. to cut the Graſs at the Aſſignment of A.* yet B. may cut the Graſs notwithſtanding thoſe Words; But if B. covenants on his Part in a Negative, Action of Covenant will lie; or if it was a Condition, which is a Negative in Law, as Proviſo that he ſhall not &c. without Aſſignment &c. in this Caſe if he does, then clearly A. may enter; But in the other Caſe it is a Grant of the Leſſor in the Affirmative; Per Baldwin and Fitzherbert; but Shelley e contra. The Reporter adds, Quære bene Caſum. D. 19. b. pl. 116, 117. Trin. 28 H. 8.

4. Debt on Bond for Performance of Covenants in an Indenture, whereof ſome were in the Affirmative, and ſome in the Negative; Defendant *pleaded a Performance* of all the Covenants *generally*. Upon Demurrer it was adjudg'd for the Plaintiff. Cro. E. 691. pl. 29. Trin. 41 Eliz. B. R. Cropwel v. Peachy.

5. In Debt upon an *Obligation* condition'd *to perform Covenants of Under-Sheriff's Bailiff, Part in Negative, Part in the Affirmative*, the Defendant *as to thoſe in the Negative pleaded negatively, and thoſe in the Affirmative, that he had obſerved them*; to which the Plaintiff *replieth, that the Defendant was not aſſiſting at the Arreſt of J. S.* to which the Defendant demurred; the Court conceived the Plea ill, without ſhewing how he had performed them, and yet the Replication is good to ſhew a Cauſe of Action; for the naughty Plea was a Trap that the Plaintiff ſhould have demurred, and ſo no Cauſe of Action would appear; Judgment pro Plaintiff Niſi. 2 Keb. 405. pl. 21. Mich. 20 Car. 2. B. R. Clavell v. Galler.

(E. a) Diſtinct and Independent Covenants. What ſhall be ſaid ſuch.

1. A. Covenanted, *that notwithſtanding any Act done by him, he was ſeiſed in Fee, and alſo, that there was no Reverſion in the Crown, and* further, *that it was of the annual Value of* 300 *l.* a Year. The Court upon the firſt Argument reſolv'd, that the laſt Covenant was abſolute and diſtinct, and had no Defendance upon the firſt Part of the Covenant. Cro. C. 106. pl. 8. Hill. 3 Car. C. B. Crayford v. Crayford. Litt. Rep. 80, 81. Crawford v. Crawford, S. C. held accordingly by all the Court, and adjudged for the Plaintiff. —

S. C cited by North Ch. J. 3 Lev. 46 Trin 33 Car. 2. C. B. in Caſe of Nervin v. Wills, which was, viz Covenant &c. in which the Plaintiff declared on a Feoffment of Lands, wherein the Defendant's Teſtator *covenanted, that notwithſtanding any thing by him done, he was ſeiſed in Fee* &c. without any Condition &c. And 2dly, *That he had full Power to ſell.* And 3dly, *That the Lands were clear of all Incumbrance by him or his Father.* And 4thly, *That the Feoffee ſhould enjoy againſt Perſons claiming under him, his Father, or Grandfather*, and aſſigns the Breach, that the Teſtator had no Power to ſell. Upon Demurrer it was agreed, that *theſe were diſtinct Covenants*, and 3 Judges againſt North Ch. J. held, that though the Covenants are diſtinct, *yet the two firſt are of the ſame Import*; for if he is ſeiſed in Fee he hath Power to ſell, and when by the firſt he covenants only againſt his own Acts, it can never be intended, that immediately by another Covenant of the ſame Effect he would covenant againſt the whole World. Now in Crayford's Caſe the Covenants were of different Natures, and concerning different Things, though of the ſame Lands; but in this Caſe the two ſubſequent Covenants are particular and reſtrained, and therefore the middle Covenant ſhall not be indefinite and general.

(F. a) Not to alien &c.

1. Leſſee for Years covenanted, that if he, or his Executors, or Aſſigns, did alien, it ſhould be lawful for the Leſſor and his Heirs to enter; *Leſſee* afterwards *made his Wife Executrix*, and died; *She married* again, and the *Husband* being poſſeſſed of the Term in Right of his Wife, who was Executrix as aforeſaid, *aliened the ſaid Term.* Baldwin Ch. J. held this no Breach of the Condition, for that the ſecond Husband cannot be ſaid Aſſignee; his Eſtate being given him by the Law, and not by Aſſignment of any nomore than a Tenant by the Curteſy &c. But Brown and Shelly held, that the Husband was Aſſignee in Law, and that an Aſſignment in Law is as an Aſſignment in Deed, and that the Lands are ſubject to the Condition in whole Hands ſoever they ſhall come. D. 6. a. b. Paſch. 28 H. 8. Anon.

2. *Leſſee* for Years *covenanted that he would not aſſign the Land, or any Part thereof, without the Conſent of the Leſſor.* The *Leſſor, during the Term, entered into Part of* the Land demiſed, and *then the Leſſee aſſigned the Reſidue of the Term in the reſt of the Land, without the Conſent of the Leſſor.* Leſſor brought Covenant. Roll Ch. J. held, that the Covenant was collateral, and conſequently broken by the Aſſignment of the Term, notwithſtanding the Leſſor had entred on Part of the Lands; And Judgment Niſi. Sty. 265. Paſch. 1651. Collins v. Shelley.

3. Leſſee covenants *not to aſſign* his Term without the Leſſor's Conſent in Writing. If Leſſee *deviſes the Term* to J. S. without the Leſſor's Conſent, it is no Breach; For a Deviſe is not a Leaſe; Sic Dictum fuit. Sty. 483. Mich. 1655. B. R. in Caſe of Fox v. Swan.

(G. a) For further Aſſurance.

3 Le. 1. pl. 2 Anon. S. C. held accordingly.

1. A. *Bargained and ſold* his Lands to B. in Fee by Deed indented, and *covenanted to make to the Vendee a good Eſtate in Fee before Chriſtmas* next following; afterwards, and *before Chriſtmas, the Bargainor cauſed the Deed to be enrolled*; the Queſtion was, whether he had performed his Covenant without doing more? The Court held that he had not, but that he ought to have levied a Fine, *or made a Feoffment before Chriſtmas*; and ſo it ſeems, that where the Feoffment had been made before the Inrolment, the Fee had paſſed thereby, and not by the Inrolment. And. 27. pl. 61. Mich. 6 E. 6. Anon.

2. Baron and Feme make Leaſe for Life, and the Covenant was, that he ſhould make ſuch reaſonable Aſſurance *as the Counſel of Leſſee ſhould adviſe*, and the Counſel adviſed a *Fine with Warranty* by the Husband and Wife with Warranty againſt the Baron and his Heirs. Defendant refuſed; Covenant was brought, and it was moved, that it was not a reaſonable Aſſurance to have a Fine with Warranty, becauſe the Warranty did trench to other Land; but per Cur. it is the ordinary Courſe in every Fine to have a Warranty, and the Party may rebutt the Warranty. Godb. 435. pl. 499. Paſch. 3 Car. B. R. Goad v. Winch.

Gilb. Equ. Rep. 139. Turſaker v. Robinſon, S. C. in totidem Verbis.

3. A Covenant for further Aſſurance *will not be aſſiſted in Chancery where the original Conveyance it ſelf is void*; As if a Man *covenants to ſtand ſeiſed to the Uſe of a Meer Stranger, and* covenants *to make further Aſſurance*, this Covenant depending on the Nature of the Conveyance, if that be void, the Covenant which is only *Auxiliary*, and goes along with the Eſtate, muſt be void too. Arg Ch. Prec. 476. pl. 298. Mich. 1717. and decreed accordingly. Furſaker. v. Robinſon.

(H. a) What are mutual Covenants; and Pleadings.

1. THE Plaintiff covenants, *that if the Defendant would pay* 40 *l. he would convey as the Counſel of the Defendant ſhould adviſe*; theſe being mutual Covenants cannot be pleaded in Bar one of another, which was aſſigned for Error, and Judgment affirmed Niſi. Keb. 178. pl. 143. Mich. 13 Car. 2. B. R. Hames v. Baily.

3 Salk. 108. pl. 8. S. C. which is thus, viz. that Covenant was brought upon Articles of Agreement &c. wherein the Plaintiff covenanted with the Defendant facere Dimiſſionem to him of a Mill, paying 20 l. Rent per Ann for ſo many Years, and the Defendant covenanted to pay the Rent during the Term; The Plaintiff brought this Action for Nonpayment of Rent, in which he ſet forth that the Defendant entered and enjoyed the Mill &c. The Defendant pleaded, that the Plaintiff did not make any Leaſe to him; and upon Demurrer to this Plea it was adjudged, that theſe Articles did not amount to a Leaſe, being only a Covenant Facere Dimiſſionem, and Holt Ch. J. held, that the making a Leaſe was a Matter precedent,

2. Covenant *to pay an annual Rent of* 60 *l. and to repair. Plaintiff ſays Defendant entered, but does not aver a Leaſe made.* Defendant pleads he ought not to have Rent becauſe no Leaſe was made. Per Holt, in mutual Covenants *where the Performance of one does depend upon another, the precedent Covenant muſt be performed firſt.* Per Eyres and Dolben, the Covenant and Entry amount to a Leaſe; And ſo was **Harrington and Wiſe's** Caſe; But per Holt, it has been held aliter ever ſince; Judgment for the Plaintiff. 12 Mod. 1. Mich. 2 W. & M. in B. R. Copley v. Hepworth.

cedent, and that the Plaintiff could not be intitled to the Rent till a Leaſe was made; but Eyres, Dolben, and Gregory Juſtices contra, becauſe theſe are mutual Covenants, and equal Remedies are on both Sides; and it is alleged that the Defendant entred, but upon the other Point the Defendant had Judgment upon arguing the Demurrer. Mich. 2 W. 3.

3. In Debt on a Deed, in which the Plaintiff *in Conſideration of* 1100 *l. to be paid* to him by the Defendant, *covenanted to aſſign to the Defendant* 10 *Shares in the Corporation of Linen Manufacture on the* 30*th of January next*, and the *Defendant covenanted that he would then accept* thoſe Shares, *and at the ſame Time pay the Plaintiff the ſaid* 1100 *l.* &c. Both Parties bound themſelves to each other in the Penal Sum of 2200 l. to perform Covenants. *Breach was aſſign'd in Non-payment of the* 1100 *l. on the ſaid* 30*th of January* after the Date of the Indenture. It was inſiſted for the Defendant, the Aſſignment ought to precede the Payment, becauſe the Covenant to pay it was in Nature of a Condition or Defeaſance to ſave the Forfeiture of the 2200 l. and therefore the Condition ſhall be taken moſt favourably for the Obligor, ſo that if it may have 2 Intendments the beſt ſhall be taken for him. And by the Reſolution of the Caſe in D. 17. a. the Payment in the preſent Caſe muſt relate to the Acceptance of the Aſſignment, and not to the Day of making it, and if ſo, it was impoſſible Defendant ſhould accept it before it was made; ſo that *the true Meaning was, that the Plaintiff ſhould aſſign the Shares on the* 30*th of January, and the Defendant ſhould accept it, and upon ſuch Acceptance the Money ſhould be paid*; and of this Opinion was the whole Court. Lutw. 490. 492, 493. Paſch. 5 W. & M. Elwick v. Cudworth.

4. Covenant upon Articles of Agreement between the Teſtator S. and the Defendant, by which it was covenanted and agreed between them, *that S. ſhould aſſign to the Defendant his Intereſt in a Houſe, &c. and that the Defendant ſhould pay to S.* 30 *l.* The Plaintiff aſſigns for *Breach, that the Defendant has not paid the* 30 *l.* &c. The Defendant *pleads, that S. did not aſſign* his Intereſt in the Houſe to the Defendant. The Plaintiff demurrs; and adjudged for him, becauſe theſe are mutual and independant Covenants, and the Parties may have reciprocal Actions, and therefore the Plaintiff may bring his Action before the Aſſignment of the Houſe, and the Defendant has a Remedy after, if the other Party does not perform his Part. Lord Raym. Rep. 124, 125. Mich. 8 W. 3. Trench v. Trevin.

5. The Plaintiff's Teſtator *undertook a Voyage to* Ruſſia, and there was to obſerve the Orders of the Defendant's Brother, which was *to draw the Czar of Muſcovy's Tooth.* The *Defendant paid him* 56 *l. and covenanted to pay him* 100 *l. more ſuch a Day of January then following*, and for Non-Payment of this 100 l. an Action of Covenant was brought. The Defendant pleads, that the Plaintiff's Teſtator did not perform his Part of the Agreement; but it was held, that the *Agreement here was reciprocal, and not conditional*, and the Defendant muſt bring his Action for not performing of the Agreement on the Plaintiffs Part; and this is not like where I promiſe to give a Man Money for building a Houſe, here I am not to pay the Money until the Houſe is built, and here likewiſe is a Day certain when the Money is to be paid. Judgment per Quer'. Mich. 7 Ann. B. R. Sheffeild v. Styles.

6. A *Leaſe for Years* was made *rendring Rent*, and a *Covenant to repair, with a Re-entry for Non-performance.* Ejectment was brought, and Breach aſſigned generally for Non-performance of Covenants. The Leſſee's Agent ask'd Leſſor what Rent was due, and that it ſhould be paid him; but Leſſor replied, he would not trouble himſelf about the Rent, but would ſet aſide the Leaſe; and the Defendant being prepared to prove a Tender pleaded Performance generally. At the Trial

the Defendant offering to prove the Tender, the Plaintiff did not inſiſt on the Non-payment of the Rent, but proved a Breach of Covenant for *not keeping a Barn well thatch'd*, and found for the Plaintiff. The Defendant was turned out of Poſſeſſion, and after brought his Bill for Relief againſt the ſaid Verdict, and to have a new Leaſe granted for ſo much of the Term as was not expired. Per Cur. if a Bond had been given for Performance of the Covenants this Court could not relieve againſt it; but Ld. Chancellor ſaid, he could not apprehend what Damage the Leſſor could ſuſtain if the Leſſee ſuffered the Buildings to be out of Repair, ſo as he kept the main Timber from being rotten, and left all in good Repair before the End of the Term; and therefore referred it to a Maſter to ſee what Damage was done (if any) for Non-performance of Covenants, and at what Time &c. 2 Mod. Caſes 90. Hill. 10 Geo. 1. Hack v. Leonard.

7. It was admitted Arg. that where *Covenants* are mutual an Action will lie for either of the Parties, without *averring Performance* on his Part, though *one is the Conſideration of the other*, and though Pro or In Conſideratione is in the Declaration. 8 Mod. 294. Trin. 10 Geo. in Caſe of Shelbourn v. Stapleton.

(I. a) Determin'd and waiv'd. In what Caſes.

1. A. Sold Lands to B. and it was covenanted betwixt them, *that A. upon Requeſt made unto him or his Heirs ſhould make Aſſurance to B.* of the ſaid Land. *A. is attainted*; Now the Covenant is ſuſpended, for A. has not any Heir; afterwards *the Heir of A. is reſtored by Parliament with a ſaving to others all their Rights* &c. B. is not aided by that ſaving ſo as he can make Requeſt to the Heir of A. &c. 4 Le. 174. cites Clovell v. Moulton.

2. A. *leaſes by* Deed *to M. for* 10 *Years*, and M. covenants at the End of the Term *to leave four Acres of the Land fallow'd* and plow'd, and in that there was alſo a Proviſo, that *if M. miſlikes* his Bargain, that *upon a Year's Warning he may ſurrender* his Eſtate, and after M. ſurrenders accordingly, but had *not left any fallowed*; and adjudged by the Court that that *Acceptance of the Surrender* has not *diſpenſed* with the Covenant. Noy 118. Auſtin v. Moyle.

3. *Otherwiſe* it had been if the Proviſo had been *in the End of the* 10 *Years*, for then if the Leſſor accepts the Surrender before the 10 Years expire, it is impoſſible for the Leſſee to perform the Covenant; Judgment that the Plaintiff ſhould recover. Noy 118. Auſtin v. Moyle.

4. The Defendant ſold Lands to the Plaintiff, and *covenanted that he had a good Title and Right to ſell*, and there was a *Proviſo* in the Deed, *that if* 100*l. was not paid at a future Day, that the Grant, and Bargain and Sale and all ſhould be void.* The *Money was not paid at the Day*, and ſo the Eſtate was void; but yet the *Plaintiff brought an Action of Covenant, for that the Defendant had no Right to ſell*; and the Defendant demands Oyer of the Deed, and demurs. The Queſtion was, Whether the Eſtate and all being void by the Non-payment of the Money, an Action of Covenant would lie? And the Court inclined it would, for there was an *Action attached in the Bargainee immediately upon the Sealing of the Deed, which cannot be deveſted by the Non-payment of the Money*, for he might have brought his Action as ſoon as the Deed was ſealed; *But if the Words had been, that the Indenture ſhall be void*, it would have been

been ſtronger againſt the Plaintiff, for then there would have been nothing to ground his Action upon. Freem. Rep. 41. pl 48. Trin 1672. Raynolls v. Woolmer.

5. A. covenants with B. *to pay* 20 *l. at his Marriage, or when J. S. ſhall die*, which ſhall firſt happen; *though B. brings no Action when J. S. dies, he may when he afterwards marries*; For per Cur. though the Plaintiff was intitled to his Action upon the firſt Contingency, if he tarry till the ſecond happen, it is but in his own Delay, and the Defendant ſhall not take Advantage of it; Judgment for the Plaintiff. Ld. Raym. Rep. 133. Mich. 8 W. 3. Loggin v. Orrery (Lord.)

(K. a) Count.

1. COvenant becauſe the Defendant did not hold Covenant of *all the Lands and Tenements* that he had leaſed in D. and becauſe he *did not ſhew the Certainty* of the Lands and Tenements, therefore Writ was abated. Br. Covenant, pl. 8. cites 46 E. 3. 4.

2. *So* in Writ of Covenant *to levy a Fine*, it ſhall be of *ſo many Houſes*, ſo many *Acres* of Land, ſo many Acres of Meadow &c. Ibid.

3. Covenant was brought, and the Writ was Quod teneat Conventionem inter eos Factum *de Omnibus Terris et Tenementis* which he had *in the Counties of L. and G.* and *counted that he conanted to make him Surety of all Lands and Tenement which he had in the Counties aforeſaid, and that he pray'd him &c. and he would not make it*, to the Damage &c. and the Defendant *pleaded to the Writ, becauſe it was* general *De omnibus Terris et Tenementis* &c. *without Certainty*, et non allocatur; but the Writ awarded good per Judicium, and yet contra 46 E. 3, 4. and alſo Writ of Covenant to levy a Fine ſhall be more certain, and the ſame of Præcipe quod reddat; but it was ſaid, that contra here, becauſe *it is only to recover Damages, and no Land.* Br. Covenant, pl. 9. cites 47 E. 3. 3.

4. *Covenant* upon a Deed *to deliver two Pieces of Cloth, Price* 40 s. and the *Price was omitted in the Writ*, and yet the Writ awarded good; for he may put it in the Count, and in Covenant he ſhall recover only Damages. Br. Brief, pl. 364. cites 7 E. 4. 25, 26.

Br. Variance, pl. 99. cites S. C. —— Br. Covenant, pl. 29 cites S. C.

5. In Pleading to *ſay in ſuch an Indenture it is contained ſo and ſo*, is no direct Affirmative that the Party did thus and thus covenant and grant, for to ſay that it is contained in the Indenture, and to ſay that it is covenanted in the Indenture, are two Things; Per Bromley Ch. J. Pl. C. 143. a. b. Trin. 1 Mar. in Caſe of Browning v. Beſton.

6. But if the Indenture had been inrolled De Verbo in Verbum, then it had been ſufficient to have ſaid ut ſupra; for by the Inrolment it had appeared to the Juſtices judicially, and then the ſaying that it is contained in the Indenture is a putting them in Remembrace of a Thing apparent to them in the Record; but as it is here it is no good Plea; Per Bromley Ch. J. Pl. C. 143. b. Hill. 2 Mar. in Caſe of Browning v. Beſton.

7. *Tenant for Life made a Leaſe for* 15 *Years, rendring Rent to him, or to his Heirs or Aſſigns*; but there was *no expreſs Covenant that the Leſſee ſhould enjoy* it during the Term; the *Tenant for Life died within the Term*, and he in *remainder entred on the Leſſee, who* thereupon *brought an Action* of Covenant *againſt the Executor of the Tenant for Life*; but it was adjudged againſt him upon the inſufficiency of his Declaration; 1ſt. Becauſe he had *not alledged in Fact that he was poſſeſſed and afterwards expelled, but only by Implication*; 2dly. Becauſe *the particular Eſtate*

tate with the Remainder over ought to have been certainly alledg'd, and not with an Eo que &c. D. 257. pl. 13. Mich. 8 & 9 Eliz.

In Covenant the Plaintiff declar'd *that by Indenture Teſtatum exiſtit, that he leaſed a Meſſuage and Garden, and that Leſſee covenanted not to erect any Building in the Garden.*

8. In Error of Judgment in Covenant, it was aſſigned that the Plaintiff *declared Quod cum per ſcriptum Indentatum factum inter eos teſtatum fuit*, &c. and did *not allege in Facto that he by ſuch an Indenture did Covenant.* It was the Opinion of the Court, that the Declaration was good, and ſo are all the Precedents, and Judgment was affirmed. Cro. E. 195. pl. 12. Mich. 32 & 33 Eliz. B. R. Wilſon v. Jeffreys.

It was moved that this Declaration was not good, becauſe it is that by ſuch Indenture *Teſtatum exiſtit and does not ſay expreſsly that Dimiſit & Convenit*, and compared it to the Caſe of **Browning v. Beſton** Plowd 141. where it is Continetur in tali Indentura &c and 2 E. 4. 21. But all the Court conceived it well enough, and that the uſual Courſe in this Court is to declare in this Manner, that by ſuch Indenture Teſtatum exiſtit &c. Cro. C. 188. pl. 8. Paſch. 6 Car. B. R. Bachelour v. Gage.——Jo. 223. pl. 3. S. C. but S. P. does not appear.

Bulſt. 21. S. C. but S. P. does not appear.

9. *Leſſee* for 21 Years *covenanted to repair, and leave in Repair. Leſſor bargain'd and ſold the Reverſion to A. and B. who bargain'd and ſold to E. who brought Covenant* againſt the Leſſee for not repairing, *but* in the Declaration *did not name himſelf Aſſignee*, yet adjudg'd good. Cro. J. 240. pl. 5. Paſch. 8 Jac. B. R. Ld. Eure v. Strickland.

10. Covenant is brought upon an Indenture, that where A. had infeoffed B. of certain Land *that B. ſhould hold* it *diſcharged of all Dowers*; and alleges Dower recovered againſt him; and the Court is quod *Teſtatum exiſtit by the ſaid Indenture that ſuch Feoffment was made*, and that the Covenant was made ut ſupra, *without a poſitive Affirmation that the Covenantor had infeoffed the Covenantee, and had covenanted* ut ſupra; The Declaration was held good by the Words Teſtatum exiſtit; But ſuch Words will not ſerve where a Deed is pleaded in Bar, nor in a Replication. Judged and affirmed in Error. Jenk. 331. pl. 63. cites Cro. J. 537. 17 Jac. Bultivant v. Holman.

11. A. leaſed an Advowſon to B. for 40 Years, B. covenanted that he *would not alien without the Aſſent* of A. and becauſe he had aliened, without Aſſent A. brought an Action of Covenant; the Defendant *pleaded, that he had not aliened without his Aſſent*, and found for the Plaintiff; It was moved in arreſt of Judgment, that the Plaintiff had *not alleged that the Alienation was by Deed*, becauſe an Advowſon cannot paſs without Deed; but adjudged for the Plaintiff; For it ſhall therefore be intended, that the Alienation was by Deed, and ſo the Breach well laid. Winch. 34. Trin. 20 Jac. Anon.

12. In Covenant &c. the Defendant demurred to the Declaration, for that the Covenant was, *that the Plaintiff and his Wife ſhould enjoy certain Farms* &c. and the *Breach* aſſigned was, *that the Defendant did enter on the Plaintiff*; but per Coke Ch. J. it is well enough. 2d. Objection was, that *the Declaration is, that licet the Plaintiff had performed all the Covenants on his Part, the Defendant had not performed the Covenants on his Part:* Now the (*licet*) *is not good* without the Word (Tamen); For it ought to have been (tamen) the Defendant had not perform'd his Covenants, otherwiſe (Licet) is no direct Affirmative; Coke Ch. J. thought it would be better with a Tamen, but upon the Matter it ſeems good; And Judgment for the Plaintiff. Roll Rep. 267. pl. 41. Mich. 13 Jac. B. R. Pemberton v. Platt.

Jo. 305 pl. 16 S. C. ſtates it, that the Baron died, and the Feme

13. *Feme Tenant for Life Remainder to Baron in Fee made a Leaſe to J. S.* for Years, wherein *J. S. covenanted with Baron and Feme their Heirs and Aſſigns to repair, and they conveyed the Reverſion to A.* And for Default of Repairs, *A. brought Action as Aſſignee to the Baron, without averring the Feme to be Dead.* And reſolved to be well brought; becauſe the

the *Eſtate for Life being transferred with the Fee, is thereby drowned* and confounded in the Fee. Cro. C. 285. Mich. 8 Car. B. R. Major v. Talbot.

and the Heir of the Baron joined in a Grant to A. and his Heirs.

A. brought Covenant againſt J. S. and expreſs'd all this in his Declaration, and that the Defendant had not perform'd the Covenant in repairing the Houſe, which is come to him as Aſſignee of the Heir of the Baron, without ſaying that the Wife was Dead. It was objected that the Covenant ought to be as Aſſignee of the Feme ſo long as ſhe lived, and not as Aſſignee of the Heir of the Baron during her Life, and cited Bredon's Caſe and Treport's Caſe; But three Juſtices (abſente Richardſon Ch. J.) e contra; For they agreed that each paſs'd his own Eſtate to the Grantee, and in regard to Strangers who may receive Prejudice, the Feme's Eſtate continues, ſo that if any Rent-Charge or other Charge was made by the Feme, the Grantee ſhall hold it charg'd during the Life of the Feme, but in Truth the Eſtate of the Feme was merged in the Reverſion in Fee, and this is no Prejudice to the Leſſee for Years; For he is ſubject to the Covenant, as well after the Determination of the Feme's Eſtate as in her Life; And adjudg'd that the Action was well brought. ——S. C. cited Vent. 160.

14. In *Covenant brought againſt an Executor*, the *Breach* aſſigned *was for Non-payment of Rent*; the *Defendant pleaded Plene Adminiſtravit*. After Verdict for the Plaintiff it was moved in arreſt of Judgment, that the Declaration was ill, for it was (by a certain Writing, per Quod Teſtatum exiſtit,) that the Teſtator covenanted, whereas, the (per Quod) ſhould be omitted; For tho' in Covenant (Per quoddam ſcriptum Teſtatum exiſtit) has been allow'd to be good, yet it ought to be with ſuch Addition, becauſe it is not ſo preciſe an Affirmation; but the Court thought it to be all of one and the ſame Senſe, and therefore good, and Judgment for the Plaintiff. Sid. 375, 376. pl. 2. Mich. 20 Car. 2. B. R. Stephenſon v. Stephenſon.

2 Keb. 400. pl. 4. S. C. and the Court held the Per quod Teſtatum exiſtit to be well enough after Verdict. —— If in Covenat he declares *Quod per quandam Indenturam teſtat' Exiſtit, that the Defendant did Covenant*; this with a *Profert* is good, becauſe when he ſays, the Indenture atteſts that he did covenant, this is a certain Allegation that there was ſuch an Indenture; and the Indenture is only Traverſable on the Iſſue Non eſt Factum. Gilb. Hiſt. of C. B. 101.

15. Covenant *to deliver Coals upon Requeſt at the Port of N. and to put them in ſuch Quantities as the Plaintiff ſhould appoint, in ſuch Veſſels as the Plaintiff ſhould prepare*; and the *Plaintiff alleges that he did requeſt him, &c. at London*. The Defendant *pleaded he was ready at the Day to deliver them*. And the Plaintiff demurred. And it ſeemed to the Court that the Defendant's Plea had not been good, but the *Declaration was naught for want of ſufficient Averment, for he ought to have averred, that he did appoint the Defendant what Quantities he ſhould put into ſuch and ſuch Veſſels as he had prepared*; for *where the Plaintiff is to do the firſt Act, he ought to aver Performance*, and cited 7 Rep. 10. Sty. 47. Parmeter v. Greſſum. Beſides, *when the Thing to be done or delivered is a matter of Bulk, there ought to be a certain Time agreed, and* the Party ought *to give convenient Notice* cites 1 Inſt. 210. Semble q'le Declaration ſuit male. Freem. Rep. 93. pl. 107. Paſch. 1673. Griffith v. Manſell.

16. Covenant &c. the Plaintiff declared on an Indenture, in which the Defendant covenanted, *that he was ſeiſed in Fee, &c. and that he would free the Lands from all Incumbrances; and alſo for quiet Enjoyment*; and the *Breach* aſſigned *was upon an Entry and Eviction by T. S.* and concludes *Et ſic conventionem ſuam prædictam fregit, in the ſingular Number*; and upon a Demurrer to this Declaration it was objected, that the Breach did relate to all the three Covenants, and therefore the Concluſion was ill, becauſe he did not ſhew what Covenant in particular. But it was anſwer'd, that *Conventio is Nomen Collectivum*, and if 20 Breaches had been aſſigned, he ſtill counts De placito quod teneat Ei Conventionem inter eos factam; And of that Opinion was the Court, and that the Breach being of all three Covenants, the Recovery

in one would be a good Bar in any Action to be brought afterwards on either of thoſe Covenants. 2 Mod. 311. Trin. 30 Car. 2. C. B. After v. Mazeen.

17. In Covenant brought *for diſturbing the Plaintiff in a Way*, the *Breach* aſſigned was, *that J. S. diſturbed but ſhewed not what Title J. S. had*, and therefore ill. 3 Lev. 335. Trin. 3 W. & M. in C. B. Holms v. Seller.

So if Bond is given for Performance of Covenants the Covenants and Obligation being both for the Corroboration of a Grant which was void, they are all void. Lev. 45. Mich. 13 Car. 2.——So it is in caſe of Promiſes. Yelv. 18. Mich. 44 & 45 Eliz. B. R. Soprani & Bernardi v. Skurro.

18. *Where a Covenant refers to an Eſtate* &c. *and is dependant* upon it *or waits upon it, and there is no Eſtate granted*, the *Covenant fails*; *but where the Covenant is a Diſtinct, ſeperate, and independant Covenant, it is not material whether any Eſtate paſs'd*, and that the Plaintiff need not ſhew it, nor ſay, Quod Conceſſit but *the Way to declare is with a Quod cum Teſtatum exiſtit*, but ſuch a Covenant ſubſiſts with or without the Eſtate. 1 Salk. 199. pl. 5. Mich. 10 W. 3. B. R. Northcote v. Underhill.

19. Covenant *for not repairing brought againſt an Aſſignee of an Aſſignee*; The Plaintiff need not ſet forth the intermediate Aſſignments. 8 Mod. 72. Paſch. 8 Geo. Lovelock v. Sorrel.

(L. a) Aſſignment of the Breach.

1. IN Covenant notwithſtanding that *diverſe Covenants are mentioned in the Writ*, yet *in the Count he need not ſhew the breaking of all.* Thel. Dig. 85. Lib. 9. cap. 6. S. 4. cites Hill. 40 E. 3. 5.

2. Covenant by Indenture between the Leſſor and Leſſee *that the Leſſor during the Leaſe ſhall be four Days in the Year in the Houſe without being ouſted in Pain of* 100 *l.* and the Leſſor *comes to enter*, and the *Leſſee faſtens the Doors and the Windows*, this is no breaking of the Covevant without ſaying that he *ouſted him*, and the ſame Law ſeems to be of other ſuch like Condition. Br. Condition. pl. 35. cites 3 H. 4. 8.

3. D. *Leſſee* for Years among other Covenants, *covenanted that he ſhall not cut any Trees, by which they ſhall be waſted and was obliged to perform* &c. In *Debt brought upon the Obligation*, and *Breach* aſſigned *in cutting* 20 *Oaks*, the Defendant *pleaded that he did dot cut* the ſaid 20 *or any of them* Modo & Forma prout &c. the *the Plaintiff ſaid quod ſuccidit* 20 *prout* &c. The *Jury found that he had cut* 10, yet the *Plaintiff had Judgment*; for the Covenant is broken if he cut but 10, and the reſt is only Surpluſage. Dy. 115. b. pl. 67. Paſch. 2 & 3 P. & M. Tirril v. Dun.

4. *Leaſe for Years* of ſeveral Meſſuages *dated in November, and to commence at Michaelmas next following*, in which the *Leſſee covenanted to repair all the ſaid Meſſuages, except ſuch as the Leſſor ſhould by Writing appoint to be pulled down during the Term*, and gave Bond for performance. In Debt on the Bond by the Leſſor, Defendant *pleaded Performance* &c. the Plaintiff *replied, and ſhew'd the Breach in not repairing one Meſſuage, parcel of the demiſed Premiſſes, and averr'd that the ſaid Meſſuage was not appointed to be pulled down during the Term*, and upon this they were at Iſſue, (viz.) whether the Defendant had repaired it or not; and it being found for the Plaintiff, it was mov'd in Arreſt of Judgment, that the Averment in the Replication was inſufficient; For the Leaſe being dated in November, and the Term being to commence not before Michaelmas

Michaelmas following, the Houſe might be appointed to be pulled down before the commencement of the Term, and then the Defendant is not bound to repair it; And ſo the Averment does not Anſwer the Exception; but after many Motions it was reſolv'd by all the Juſtices that *this Averment was ſuperfluous*; for it had been ſufficient to have aſſigned the Breach in not repairing the Meſuage without averring that it was not appointed to be pulled down. And if it had been ſo appointed, it ought to be ſhewed on the Defendant's Part, becauſe it tends to his Advantage; for ſuch Appointment would diſcharge the Covenant as to that. Le. 17. pl. 21. Paſeh. 26 Eliz. Smith v. Peaze.

5. In Covenant the Plaintiff declared that the Defendant by his Deed dated 1 Oct. 28 Eliz. did Covenant *that he would uſe his beſt endeavours to prove the Will of J. S. or* otherwiſe that *he would procure Letters of Adminiſtration by which he might lawfully convey ſuch Term to the Plaintiff, which he had not done, licet ſæpius requiſitus* &c. The Defendant *pleaded that he came to Dr. Drury into the Court of the Arches, and there offered to prove the Will* &c. *but becauſe the Wife of the ſaid J. S. would not ſwear that it was his Will, they could not be receiv'd to prove it*; upon Demurrer it was inſiſted for the Defendant, that the Action did not lie; for the Covenant limits no Time when the Thing ſhould be be done by the Defendant, ſo that it being a Collateral thing he has Time during Life, but admitting that he had covenanted to prove the Will upon Requeſt, then the Plaintiff ought to ſhew an expreſs Requeſt, and the Time and Place when and where it was made, becauſe it is for his Benefit, and *without* ſuch *a Requeſt ſpecially and certainly laid*, it was held per tot. Cur. that *the Action would not lie*, and that the Bar ſhall not help the in ſufficiency of the Declaration. Le. 124. pl. 170. Trin. 30 Eliz. B. R. Cater v. Booth.

6. In Covenant the Plaintiff declared, that the Defendant aſſigned to him all the Right and Intereſt which he had to the Lands in N. lately granted by the Lord D. to one F. for the Term of 20 Years, and covenanted, that the ſaid Premiſſes then were, and *ſhould continue Free from all Incumbrances and former Grants made by the Defendant, and the ſaid F. or either of them, and that the Defendant was lawful Owner* of the ſaid Leaſe, Term and Premiſſes, and aſſigned a *Breach, that F. before the Aſſignment* of the Term to the Plaintiff, *had granted two ſeveral Parts to two Perſons ſeverally for 20 Years*, &c. the *Defendant pleaded, that F. had granted his Intereſt in the Lands, except the Lands ſo ſeverally demiſed by him.* The Plaintiff Demurred, the Queſtion was, whether by this Covenant the Defendant ſhall be intended to be Owner of the Term only, or of the whole Land during the Term, and held the Word (Premiſſes) extends as well to the Land, as to the Term of Years; For it takes in every Thing before-mentioned, and which might be incumbred; and this appears more Plain by the ſubſequent Words, viz. that the Defendant is lawful Owner of the Leaſe, Demiſe, Term of Years, and Premiſſes, which Word (Premiſſes) needed not to be in the Deed, if it were intended only, that the Term granted ſhould be diſcharged from Incumbrances. And. 236. pl. 253. Trin. 32 Eliz. Anſley v. Fiske.

7. Covenant for that the Defendant by Indenture did Covenant *that he his Executors and Aſſignees would repair a Mill let to the Defendant*, and *alledges that the Mill was defective on Reparations, and the Defendant his Executors and Aſſignees did not repair it*, and it was demurred upon the Declaration, becauſe he did *not alledge that he nor his Executors* or Aſſigns did not repair it the Action does not lie and it ought to be alleged in the disjunctive, and not in the conjunctive, and of that Opinion was the Court. Cro. E. 348. pl. 23. Mich. 36. and 37. Eliz. B. R. Colt v. Howe.

8. An

Cro. E. 974, 675. pl. 2 S. C. adjudg'd accordingly, becauſe nor averr'd that the Recoveror entred upon good Title; For otherwiſe there is no Cauſe of Action, and pleading the Recovery to be by Verdict is not Material; becauſe it may be upon falſe Verdict and without Title ——— 5 Mod. 371. cites S. C. accordingly ——— S. C. cited by Vaughan Ch. J. Vaugh. 122. though the Eviction was by Courſe of Law.

8. An Houſe is leaſed by the Words *grant*, *demiſe &c.* and the Leſſor *covenants that the Leſſee ſhall enjoy* &c. *without Eviction by the Leſſor or any claiming under him*, and a *Bond is given for performance of Covenants, the Leſſee aſſigns*, and in an Ejectment the Leaſe is recovered from the Aſſignee; per Cur. the Plaintiff (who was the Obligee) ought to *ſhew that the recoveror had Eigne-Title*; For otherwiſe the covenant in Law was not broken. 4 Rep. 80. Trin. 41 Eliz. Nokes's Caſe.

9. The Covenant was *for Quiet Enjoyment againſt B. and all claiming under him*; the Breach aſſigned was becauſe *he was ouſted by J. S. who did claim under B.* but did *not ſhew How.* But all the Court of B. R. held it well enough; For he is a Stranger thereto and cannot ſhew it certainly; And adjudg'd in B. R. for the Plaintiff, but by the Opinion of all the Juſtices and Barons, Judgment was reverſed in the Exchequer Chamber. Cro. E 823. pl. 22. Paſch. 43 Eliz. White v. Ewer.

10. *Apprentice Bond* was conditioned, 1ſt. To ſerve well. 2dly, To Account duly. 3dly, To make ſatisfactions within 3 Months after Notice, of all Loſſes which he ſhould ſuſtain by the Apprenticeſhip. Defendant pleads performance generally, the Plaintiff aſſigned for Breach, becauſe *upon Account he was found in Arrears* 60 *l. of Poliſh Money which he received and converted* to his own Uſe. And ſo &c. And tho' he *did not alledge he received it as Apprentice* yet it may well be intended, for it is Merchandize and Judgment for the Plaintiff. Cro. E. 830, 831. pl. 39. Paſch. 43 Eliz. C. B. Cutler v. Brewſter.

11. A. Leaſed to J. S. the Plaintiff 35 Eliz. the Barton of B. for 6 Years, and covenanted that *he ſhould enjoy it during the Term quietly and without Interruption, and diſcharged from Tithes &c. and that if the Tithes were demanded and recovered againſt him during the Term he ſhould recoup in his Hands ſo much of the Rent as the Tithes amounted to.* J. S. brought Covenant and aſſign'd the Breach that 42 Eliz. the Parſon ſued him for Tithes there growing 38 & 39 Eliz. All the Court held that this *Suit after the determination of the Term was a Breach of the Covenant*, for he did not enjoy it diſcharged &c. within the Intent of the Covenant; but becauſe it was *alledged that the Suit was lawful, or that the Tithes were due*, for he was not bound to diſcharge him from illegal Suits &c. and ſo the Breach was not well aſſigned, it was adjudg'd for the Defendant. Cro. E. 916. pl. 7. Hill. 45 Eliz. B. R. Lanning v. Lovering.

Lutw. 457. Darby v. Piltarſe. S. C. and Judgment reverſed, becauſe it appear'd by Computation that 6 Quarterly Payments were due when he demanded the 100 l. and it is not ſhewn for what Quarterly Payments he demanded the ſaid 4 Quarterly Payments, and it is not ſufficient to ſay that they were due the 25 December before the Action brought, for this is true if they were due before.

12. In Debt on Covenant to pay 100 l. Quarterly, the Plaintiff declared that 100 l. for 4 Quarterly Payments were unpaid, and *ſays not when due* and ending it is not good. Show. 8. Mich. 4. Jac. 2. in Cam. Scacc. and ſo a Judgment in B. R. was reverſed. Piltarſe v. Darby.

S. C. cited Arg. 2 Show. 473. in pl. 439 ——— Ibid. 460. S C. cited per Cur.

13. Covenant for that the Plaintiff by Indenture let to the Teſtator a Houſe in Fleet-ſtreet, for Years; and the Leſſee covenanted *to repair it well from Time to Time during the Term*; *and at the end of the Term to leave the ſame well repaired to the Leſſor*; and Aſſigns the *Breach*, for *that he did not leave it well repaired at the end of the Term.* Exception was taken to the Declaration, becauſe the Breach was aſſigned in not delivering up the Houſe well repaired at the end of the Term, and he

he does *not ſhew in what Point it was not well repaired*; Sed non Allocatur; For the Breach being according to the Covenant is ſufficient. But *if the Defendant had pleaded, that at the end of the Term he delivered it up well repaired*; *Then* if the *Plaintiff* will aſſign any Breach, he *ought Particularly to ſhew in what Point in was not repaired*, ſo as the Defendant might give Particular Anſwer thereto; And Williams J. ſaid, it was ſo reſolved in a Caſe between **Boyle and Sarye**, that in a Declaration in Action of Covenant, it ſuffices to aſſign the Breach as general as the Covenant is; wherefore it was adjudged for the Plaintiff. Cro. J. 170, 171. pl. 11. Trin. 5 Jac. B. R. Hancock v. Field & al'.

13. Where a Breach of Covenant is ſufficiently alleged the not ſhewing the Breach according to the uſual Form of *Et ſic non tenuit Conventionem* is not material, and there need not be a Repetition. Cro. J. 297, 298. Hill. 9. Jac. B. R. Barwick v. Gibſon, in the Exchequer Chamber.

14. In a Covenant were *inſenſible Words* and though the Deed was only between A. of the one Part, and B. and J. S. of the other, yet *J. S. who was no Party nor ſealed the Indenture was named as a Covenantor.* In aſſigning the Breach the Inſenſible Words, and alſo the Name of J. S. *may be omitted.* Cro. J. 358. pl. 18. Mich 12 Jac. B. R. Goodman v. Knight. Roll Rep. 84. pl. 32. S C. as to the Inſenſible Words.

15 Covenant &c. againſt the Defendant, *for ploughing Lands which were not Nuper laid down to Paſture*; The Queſtion was, what time ſhall be comprehended by the (Nuper) but not reſolved; but in ſome Caſe 14 Years may be Nuper and in ſome Caſe 20 Years may be ſaid Nuper, but all the Court agreed that the *Plaintiff ought to have ſhewed a certain Breach (viz) that the Defendant had ploughed up* Lands, and ſhewed what Lands which were not lately Arable; and therefore adjudg'd, quod Querens nil capiat per Breve. 2 Bulſt. 258. Trin. 12 Jac. Genner v. Larking.

16. Tenant for Life of a Park made a Leaſe thereof, with all Profits of the Deer for 5 Years, and the Leſſee *covenanted Yearly, and in quolibet dictorum annorum, to deliver to the Leſſor ſo many Deer. Breach* was, *that the Leſſee had not delivered the Number of Deer mencioned in the Covenant, after the 5 Years*; But per Curiam, thoſe Words, in quolibit dictorum annorum, ſhall not have Relation to the natural Life of Leſſor, but only to the 5 Years, and not to the Life of the Leſſor. 2 Roll. Rep. 38. Trin. 16 Jac. B. R. Talbot v. Leviſon. Popham. 146 Talbot v. Lacen, S. C. reſolv'd accordingly.

18. Covenant whereby the Defendant covenanted *to find the Plaintiff with Meat, Drink and Apparel, and other Neceſſaries*, and aſſigns the Breach as general as the Covenant, and does *not ſhew what other Things were neceſſary*; and therefore the Court held, that the Declaration was ill, and the Judgment being upon Nihil Dicit, and intire Damages given, the Judgment was reverſed. Cro. J. 486. pl. 5. Trin. 16 Jac. B. R. Mills v. Aſtell. In *Covenant by an Apprentice* againſt his Maſter &c. *Breach* aſſigned *that ſuch a Day he departed from his House, and did not inſtruct his Apprentice in his Trade, nor find him Meat, Drink, and other Neceſſaries &c.* Upon a Demurrer, becauſe *Alia Neceſſaria* was too general, the Court held the Breach certain in the very Words of the Covenant, and Alia Neceſſaria is intended of ſmall Things, as Trimming, Waſhing &c. which would be too long to inſert, and the Plus Grand being here particularly aſſign'd, there is no need to aſſign the Small ſo particularly; and Judgment for the Plaintiff. 3 Lev. 170. Trin. 36 Car. 2. C. B. Procter v. Burdett. ——— 2 Show. 442. pl. 405. Burdet v. Proctor, S. C. and Judgment in C B. affirmed in B. R. ——— Ibid. 173 cites S. C. ——— 3 Mod 69 S. C and Judgment affirmed. ——— 1 Show. 242, 243. in the Caſe above it is ſaid, that the Rule where the Covenant is general that the Breach may be ſo too, as in Cro. J. 304. 369. Cro Eliz. 914. Noy 50. reaches not this Caſe, thoſe Caſes being all of Covenants to enjoy, and there it lies not in the Party's Knowledge.

2 Roll Rep. 22 Burnell v. Wood, S. C. adjudg'd accordingly; but if the Agreement had been, that it ſhould be firſt meaſured, then the mutual Agreement of the Parties changes the Caſe.

19. Covenant, *whereas he had ſold to the Defendant all his Copyhold Land in F. that if it did exceed the* Quantity *of* 8 *Acres*, to be *admeaſured according to to the Proportion of* 16 *Feet and an half for every Pole, that he ſhould pay for every Acre over and above the* 8 *Acres ſo to be admeaſured, according to the ſaid Rate of* 4 *l. for every Acre, and alleged that the Copyhold Land was* 12 *Acres meaſured by the ſaid Meaſure.* The Defendant ſaid, there were not 12 Acres meaſured; but found for the Plaintiff; It was ſaid, the Breach was not well aſſigned, becauſe it was *not alleged that the Lands were admeaſured, and till then the Surpluſage cannot be known*; Sed non allocatur; for the *Plaintiff might meaſure it privately, and he need not tell the Defendant when he meaſured it*, and the Iſſue being found that they contained ſo much, it was holden by the Court the Declaration was good. Cro. J. 472. pl. 1. Paſch. 16 Jac. B. R. Burwell v. Wood.

2 Roll Rep. 144. Preſley v. Humfries, S. C. and it ſhall be intended that they are in the ſame Place.

20. Covenant, for that he let to M. a Water-Mill in the Pariſh of S. and all Houſes, Buildings, Walls &c. and Dams, to the ſaid Mill belonging for 21 Years, and that he covenanted *to repair the Houſes, Dams, Water-Courſes and Banks to the Mill belonging, and leave them ſufficiently repaired* &c. and four Mill-ſtones. A *Breach* aſſigned *was in not repairing the Mill and Mill-Banks, and for not leaving the Mill-Stones*; Exception was, becauſe *not ſhewed in what Vill they were, nor whether it was a Corn-Mill, or Fulling-Mill*; Sed non allocatur; For all is one, the Breach being aſſign'd in not repairing &c. And adjudged for the Plaintiff. Cro. J. 557. pl. 2. Hill. 17 Jac. B. R. Breſley v. Humphry.

Palm. 278. S. C. but S. P. does not appear.

21. *Debt for* 60 *l. upon a Deed reciting, that whereas W. C. had given divers of his Goods to J. A. the Teſtator; he covenanted, that if the ſaid C. ſhould pay a Debt of* 63 *l. (for which the ſaid J. A. ſtood bound in* 120 *l. to pay to one J. S. upon the* 2*d of June then next following) and ſhould ſave harmleſs the ſaid J. A. from the ſame, that then the Plaintiff ſhould have and enjoy Conceſſionem of the ſaid J. A. of the Moiety of the ſaid Goods; Ad quas Conventiones performandas he obliged himſelf by the ſaid Writing to the Plaintiff in* 60 *l. and alleged in Facto that the ſaid W. C. upon the* 2 *June ſecundum Formam & Effect.' Scripti præd' paid* 63 *l. by which W. C. has ſaved him harmleſs from the ſaid* 63 *l. ſo that he was not damnified, and that neither the ſaid J. A. in his Life-time, nor the ſaid E. his Executrix ſince had made any Grant unto him of the Moiety of the ſaid Goods granted him by the ſaid J. per quod Actio accrevit &c.* The Defendant *pleaded, that the ſaid W. C. had not paid the ſaid* 63 *l.* &c. Whereupon they were at Iſſue, and Verdict and Judgment for the Plaintiff, and now aſſigned for Error, that here was not a good Breach. 1ſt. Becauſe he does *not ſhew what the Goods were whereof the Deed of Gift was made*; Sed non allocatur, becauſe the Generality is ſufficient. 2dly, The *Allegation is, that he hap ſaved him harmleſs from the* 63 *l. whereas it ought to have been from the* 120 *l.* 3dly, Becauſe he does *not ſhew that he requeſted a Grant of the Moiety of the Goods, and tender'd a Writing unto him to ſeal*; For he being the Party who is to have the Benefit thereof, ought to make the Tender; And for theſe Cauſes, but principally for the ſecond, the Judgment was reverſed. Cro. J. 661. pl. 10. Hill. 20 Jac. B. R. Archer v. Dalby.

Palm. 388. Perſon's Caſe, S. C. accordingly.

22. A. *Conuſee of a Statute, extends and aſſigns it* to B. and afterwards *grants the Land to C. and covenants that notwithſtanding any Act done by him, or any other by his Conſent, the Statute extended, and Execution remains in Force*; Adjudg'd that this Aſſignment was a Breach; But reverſed in Error; For notwithſtanding the Aſſignment the Statute ſtands in Force, but if the Declaration had concluded Eo quod conceſſit to him &c. whioh implies a Covenant, this Action had lain; But *notwithſtanding this Aſſignment, the Statute is in Force*, and the Conuſee

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may releaſe it. *But if he had covenanted that the Grantee ſhould have it without Diſturbance, this Aſſignment would be a Breach by reaſon of the Word (Grant) but here the Action is brought on a Covenant in Fact.* 2 Roll Rep. 399. Mich. 21 Jac. B. R. Pearſon v. Jones.

23. Upon a Marriage between the Son of T. and the Daughter of C. it was covenanted, *that after the Marriage &c. T. ſhould find to his Son and Wife, and their Iſſues, competent Entertainment of Meat and Drink, and during the Life of T. and to live with him in his Houſe*, and that *if the ſaid T. the Son, and his Wife, ſhould diſlike* to live together, that *then the Son and Wife ſhould have ſuch Lands and Goods of T. the Father, and to live where they pleaſe.* The *Son having Iſſue dies.* The *Wife takes a ſecond Husband.* The *Wife and T. the Father diſlike*, and diſagree &c. And now *R. brought Covenant upon the Indenture for the Lands and Goods.* Whitlock ſaid, that that is a Diſagreement within the Covenant, becauſe it came in lieu of Maintenance. Doderidge and Jones on the contrary; For the Diſagreement between the Father and Son, in the Life of the Son, had not been ſufficient; But by the Court, that T. ought to find Meat and Drink &c. to the Wife and her Iſſue by the firſt Husband, during the Life of T. and Judgment was given according to the Opinion of Doderidge and Jones. Noy. 86, 87. Hill 1 Car. B. R. Crabb v. Tooker.

Lat. 162. S. C. held accordingly, but ſtates it, that the Wife and Father diſagreed, and the ſecond Husband demanded the Land and Goods, and for Refuſal of the Father, brought Covenant. ——Poph. 204. S. C. ſtates the Action as brought by the Son's Wife and her ſecond Baron, but adjudged that a mutual Diſagreement between all ought to be alleged, and therefore Judgment was Quod Querens nil capiat; but all agreed that the Wife might have boarded with T. the Father if ſhe would, but the ſecond Husband could not.

24. S. covenants *to ſurrender her Eſtate for Life in a Copyhold upon Requeſt, and to permit B. to enjoy the ſame, and to take the Rents, Iſſues and Profits.* In Covenant B. aſſigns a *Breach, that ſhe did not ſuffer him to enjoy the ſaid Lands, but had received the Rents &c. from the making of the Indenture to the Time of the Writ* &c. Exception was taken, that there was no Requeſt as to the Permiſſion; Sed non allocatur; For the Requeſt is only to the Surrender. 2dly, That a ſpecial Diſturbance is not alleged. 3dly, The Breach is too generally without ſhewing what Profits ſhe receiv'd; But the Court conceived, that *in Covenant a Man may aſſign as many Breaches as he will, but not * in Debt upon an Obligation for Performance of Covenants*, for in that Caſe there ought to be a Certainty, and certainly aſſign'd, but in a Covenant it may be aſſign'd as general as the Covenant is. Cro. C. 176. pl. 23. Mich. 5 Car. B. R. Syms v. Smyth.

2 Show. 173. S. C. cited.— * But by the Statute 8 & 9 W. 3. cap. 11. S. 8. it is enacted, that the Plaintiff may aſſign as many Breaches as he ſhall think fit.

25. Leſſee covenanted *to repair the Houſe with convenient, neceſſary, and tenantable Reparations, and the Breach aſſigned was in not repairing for want of Tiles and daubing with Mortar, but did not ſhew that the Houſe not tenantable*; and the Court were of Opinion, that he ought to have ſhewn it, for there might be a few Tiles and a little Mortar wanting, and yet the Houſe might have convenient, neceſſary, and tenantable Reparations. Mar. 17. pl. 39. Paſch. 15 Car. 1. Conysby's Caſe.

26. In Covenant *againſt the Leſſee for Years of a Houſe for not repairing*, he *pleaded that the Houſe was caſually burnt down*; and upon Demurrer it was inſiſted, that the Plea was contrary to what *Leſſee had expreſsly covenanted to do*; And Roll Ch. J held, that though the Houſe was burnt by Negligence, or any other Means, the Leſſee is ſtill bound by his Covenant; and Judgment Niſi for the Plaintiff. Sty. 162. Mich. 1649. Compton v. Allen.

27. Covenant in a *Leaſe* for Years was to *pay yearly 20 l. at Michaelmas and Lady-Day, by equal Portions*, and the *Breach* aſſigned was, *that he did not pay the Rent due at the aforeſaid ſeveral Feaſts, during the Term aforeſaid.* It was objected, that the Breach ought to have been aſſign'd par-

particularly; but adjudged, that it was well aſſigned, for perhaps he never paid any Rent at any of the Days; and ſo a Judgment in Durham was affirm'd in Error. 1 Lev. 78. Mich. 14 Car. B. R. Coniers v. Smith.

Mod. 290. 294 S. C. adjudged by 3 Juſtices, Trin. 29 Car. 2. B. R. that the Pleading is ill, and not help'd by the Verdict, and Judgment for the Defendant. —— Lev. 301. S. C. and Judgment accordingly. —— Sid 466. pl. 2. S. C. the Plaintiff prayed Judgment againſt himſelf for his own Expedition. —— 2 Saund. 177. S. C. adjudg'd.

28. In Covenant *on a Warranty in a Fine* the Plaintiff *declar'd, that one S. habens legale Jus & Titulum did enter upon him, and evict him of a Term for Years.* Exception was taken, *that this might be by a Title derived from the Plaintiff himſelf.* Adjornatur. Mod. 66. pl. 14. Mich. 22 Car. 2. B. R. Wootton v. Heal.

2 Keb 754. pl. 16. Burnard v. Michel, S. C. ſtates this as an Action of Debt brought on a Deed for Performance, and not an Obligation generally, but a Deed with Covenants, and a Penalty ſubſequent on Non-performance thereof; Adjornatur. —— Ibid. 766. pl. 44. S. C. held and adjudg'd accordingly.

29. In *Debt upon a Deed, containing ſeveral Covenants*, for Performance whereof the Defendant obliged himſelf in the Penalty of 40 l. and counts, that the Defendant had broke the Covenants. Upon Non eſt Factum pleaded, the Plaintiff had a Verdict, and it was moved in arreſt of Judgment, that the Declaration was ill, for there was no *particular Breach aſſigned of any one Covenant*; adjudged for the Plaintiff; For though this would have been ill upon Demurrer, yet here it is cured by the Verdict. 1 Vent. 114. 126. Paſch. 23 Car. 2. B. R. Barnard v. Michell.

30. Covenant *that Baron and Feme ſhould ſurrender at the next Audit at C.* and *Breach* aſſigned *that there was an Audit 6th of April, and no Surrender*; to which the Defendant demurred, becauſe this is *not ſaid (the next Audit) but being averred that he did not ſurrender ad prædictum proximum iter, it is well enough*; Per Twiſden and Rainsford, the reſt being abſent, and Judgment for the Plaintiff. 2 Keb. 865. pl. 18. Hill. 23 & 24 Car. 2. B. R. Read v. Jackſon.

31. Debt upon a Bond for Performance of Covenants, amongſt which one was, *that the Defendant ſhould convey ſuch a Tenement for the Life of the Plaintiff, and the Life of two others, ſuch as the Plaintiff ſhould name, and that he would give him Poſſeſſion before Chriſtmas.* The Defendant *pleads, that he always was, and is ready to convey, if the Plaintiff would name his Lives, but by reaſon the Plaintiff would not name his Lives, he could not make his Conveyance.* Upon this Plea the Plaintiff demurs, and ſhews for Cauſe, becauſe the Defendant had *not alleged that he gave him Poſſeſſion before Chriſtmas*, and that he might have done, though he could not convey till the Plaintiff had named; ſed per Cur. Judgment was given for Defendant, becauſe *the Poſſeſſion ſhall not be intended a divided Thing, but a Poſſeſſion purſuant to the Leaſe that he was to make*; for otherwiſe the Poſſeſſion given would be an Act done to no Purpoſe, for he might turn him out again preſently; Adjudg'd for Defendant. Freem. Rep. 121. pl. 142. Trin. 1673. in C. B. Twyford v. Buntley.

Vent. 175. S. C. but S. P. does not appear. —— 2 Lev. 26. S. C. but S. P. does not appear —— 3 Keb. 193. pl. 38. S. C. adjudg'd.

32. Covenant for quiet Enjoyment againſt all Perſons claiming under Sir P. V. and *ſhews that ſuch a one did diſturb him, clamans Titulum under Sir P. V.* and the Defendant demurred, becauſe he did *not ſay Legalem Titulum*; and for that the Court took this *Difference*, that *where a Man makes a general Covenant againſt all Perſons*, there *a Breach of Covenant ſhall not be alleged by a Diſturbance, unleſs it be by a lawful Diſturbance*; but *otherwiſe* it is *when the Covenant is to enjoy quietly againſt a particular Perſon*, according to the Difference taken in Caſe of Clifdale v. Eſſex in Hob. 34. And the Court ſaid generally in Covenant it

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is ſufficient to follow the Words of the Covenant. Freem. Rep. 103. pl. 121. Paſch. 1673. Lucy v. Leviſton.

33. *A. and B. were bound in a Bond to C. for the Payment of* 20 *l. at a certain Day. A. covenants with B. to ſave him harmleſs* from the ſaid Bond. *B. brings* an Action of *Covenant, and alleges* for Breach *that C. ſued him in the Exchequer upon the ſaid Bond, and had Judgment againſt him*, but he *does not allege that A. did not pay the Money at the Day.* It was urged for the Defendant, that for all appears, the Money might be paid at the Day, and then, though C. did ſue B. and recover, yet it was no Breach of the Covenant, becauſe the Suit was tortious, and the Covenant ſhall not be extended to ſave harmleſs from Wrongs, and therefore he ought to have averred that the Money was not paid at the Day; But on the other Side it was ſaid, that there is a great *Difference between a general Covenant to ſave harmleſs, (for that ſhall be intended only againſt lawful Wrongs) and to ſave harmleſs againſt a particular Perſon, for that is againſt tortious as well as rightful Acts*, cites Hob. 35. Beſides, it cannot be intended that the Money was paid when it is ſet forth that C. ſued and recovered; But Vaughan Ch. J. ſaid, the Books did generally make a Difference between a general Saving harmleſs, and when it is againſt a particular Perſon, but he did conceive there was none at all; for the Reaſon was, the ſame in both, which is, when a Man is wronged the Law gives him his Remedy, which holds as well againſt every Body as againſt a particular Perſon; But the other Judges were of a contrary Opinion, and gave Judgment pro Quer', Vaughan being gone into Parliament. Freem. Rep. 142, 143. pl. 163. Hill. 1673. Hill v. Browne.

34. Covenant, in which the Plaintiff declared, that the Defendant covenanted *to build him an Houſe according to the Rules preſcribed per Statutum, for rebuilding London*, and aſſigned the *Breach, that he did not cover the Cantilivers with Lead, according to the Rules preſcribed per Statulum præd'*; there was Judgment by Default, and a Writ of Enquiry, and 15 l. Damages. It was moved in Arreſt, that the Breach was not ſufficiently aſſigned, he *not alleging in Fact, that by the Act the Cantilivers ought to be covered with Lead*; *but per Hale*, it being ſaid that he did not cover them with Lead Secundum Regulas per prædict' Statutum præſcriptas is an Averment, that the Statute ſo preſcribed. 2 Lev. 85. Paſch. 25 Car. 2. B. R. Dixe v. Jenman.

3 Keb. 142. pl. 14. S. C. adjornatur. ——S. C. cited Ld. Raym. Rep. 107. per Treby Ch. J.

35. In Covenant on a Bill of Sale, *that the Defendant was the legal Proprietor of W. ſold, and had Power*; the Plaintiff alleges *Breach, that he was not Proprietor*, and does *not ſay Et ſic non tenuit Conventionem, ſed infregit*; the Defendant *pleads tenuit Conventionem*; to which the Plaintiff demurred; and per Cur. the Breach is ſufficient, and the *Et ſic infregit is but Form*, and well enough beſide; Judgment for the Plaintiff. 3 Keb. 396. pl. 97. Mich. 26 Car. 2. B. R. Streeting v. Hinde.

36. In Covenant *for not repairing a Houſe let in S. being in Deceſu, not ſaid wherein*, to which the Defendant demurred, and ſhewed for Cauſe, that it was *not particularly ſet forth wherein it was in Decay*, which per Cur. is ill, as well as in Waſte; And Judgment for the Defendant, if Parties do not agree to amend. 3 Keb. 478. pl. 11. Trin. 27 Car. 2. B. R. Portland (Counteſs of) v. Andrews.

37. *A. granted a Rent-Charge* of 200 l. *to B. and C.* their Heirs, for the Life of M. *ad Opus & Uſum of M.* and covenanted to pay the Rent ad Opus & Uſum of M. The Rent not being paid, B. and C. bring Covenant, and aſſign the *Breach in not paying the Rent to themſelves Ad Opus & Uſum of the ſaid M.* The Defendant demurr'd, becauſe the Words in which the Breach is aſſigned contains a *Negative Pregnant*; But it being aſſign'd in the Words of the Covenant, the Court held it good. Mod. 223. pl. 12. Mich. 28 Car. 2. C. B. Baſcawen v. Cooke.

2 Mod. 138. Cook v. Herle, S. C. & S. P. agreed accordingly, and that *if the Rent* had been *paid* to M. *the Defendant might have pleaded it*, that being a Performance in Subſtance, but it ſhall not be intended without pleading it, and Judgment for the Plaintiff.

38. Covenant *that the Plaintiff ſhould have the firſt Quarter's Rent due at Lady-Day, after the Date of the Deed*; *Breach* aſſigned, *that the Defendant obſtruxit et impedivit eum* (the Plaintiff) *a recipiendo* &c. It was moved in arreſt of Judgment, becauſe the Plaintiff ſhews not how he was hindred, and cited 1 Bulſt. 139. 3 Cro. 121. **Pen v. Clover.** But it was anſwered and confeſs'd, that Non permiſit is too general, for there is no Act done, but by impedivit & obſtruxit it is clear ſome Act wat done to the Plaintiff's Hindrance, which Act the Defendant beſt knows himſelf; Adjornatur. 2 Show. 75. pl. 58. Trin. 31 Car. 2. B. R. Preſcott v. Pemberton.

39. Covenant *for Payment of Rent* which was *reſerved payable at the 2 moſt uſual Feaſts of the Year, St. John the Baptiſt and Chriſtmas, or within 14 Days after, the firſt Payment to be at Chriſtmas next after the Date. Breach* aſſigned *in Non-payment* of the Rent *at Chriſtmas* firſt, *and took no Notice of the 14th Day after*; and upon Demurrer it was urged, that the 14 Days after ſhould not refer to the firſt Payment at Chriſtmas, but that it was to be abſolutely on Chriſtmas Day; but *held* by the Court, *that the Defendant had 14 Days after the firſt Chriſtmas* as well as any other to pay his Rent in; and therefore Judgment was given for the Defendant. 2 Show. 77. Trin. 31 Car. 2. Anon.

40. Plaintiff declar'd of a Covenant *to repair all the Pales of the Garden demiſed, except all the Pales of the Weſt Side*, and aſſign'd the *Breach in not repairing the Pales contra Formam Conventionis, without ſhewing that the Default was in the Pales not excepted.* Defendant *pleaded that he had repair'd the Pales according to the Covenant.* Verdict for the Plaintiff, and Judgment accordingly by reaſon of the Verdict; but it was agreed, that *if the Defendant had demurr'd, Judgment ought to have been for him.* 2 Jo. 125, 126. Hill. 31 & 32. Car. 2. B. R. Anon.

2 Show. 36. pl. 159. S. C. but S. P. does not appear.

41. A Breach may be *well aſſigned though not directly within the Words of the Covenant*; As where in a Charter-Party it was mutually covenanted, *that the Maſter of the Ship* (who was the Plaintiff) *ſhould pay two Parts of the Port-Charges, and the Factor of the Defendant the 3d Part, through the whole Voyage.* The Maſter *declares, that he* ſailed from L. to C. and *paid 2 Parts of the Port-Charges for himſelf, and the 3d Part for the Defendant, who not repaid him.* After Judgment by Default, and a Writ of Enquiry return'd, it was objected, that the Defendant was not bound by this Covenant to pay the 3d Part to the Plaintiff, but to the Collector of the Port-Charges, and therefore he ought to have ſhewn, that the Defendant had not paid the 3d Part; Sed per Curiam, the Plaintiff having averr'd, that he paid the 3d Part, it ſhall be intended, that the Defendant did not, and in his Default the Plaintiff was forced to pay the Whole to prevent the Ship's being ſtopped in the Port; And though it was *not ſaid, that they were paid in this Voyage*, yet it ſhall be intended ſo to be, it being alleged to be paid in the ſame Ports where the Voyage was ſaid to be made. 2 Jo. 186. Hill. 33 & 34 Car. 2. B. R. Bellamy v. Ruſſell.

42. Covenant *with a Brewer for Grains*; the Brewer *mixes Hops* with the Grains and ſpoils them; Covenant lies though he *declares ſpecially.* 2 Jo. 191, 192. Paſch. 34 Car. 2. B. R. Goodhand v. Griffith.

2 Show. 248. pl. 251. S. C. the Court thought the Declaration ill, becauſe altogether informal; but the Exception on which they

43. Covenant brought on *Articles indented*, and in the *Memorandum it was, De Placito Conventionis fract'*, but the *Declaration was, as* it is *in Action ſur le Caſe, quod cum per factum Indentatum teſtatur; Quod Defendens conceſſit, and concludes not prout ſolet in Covenant, Et ſic infregit Conventionem.* After a Breach aſſigned, and a Demurrer, the Court was of Opinion, that this is an Action of Covenant, and that it is *not neceſſary to conclude Et ſic infregit*, nor uſual in Pleading to ſay De Placito quod teneat Conventionem; But the Covenant being that the Defendant non relaxa et

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a Debt assigned to the Plaintiff without his Leave, the Court was of Opinion, that the Breach was not well assigned; and gave Judgment, quod Querens nil capiat per Billam. 2 Jo. 229. Mich. 34 Car. 2. Copping v. Slaymaker.

adjudg'd the Declaration naught, was becauſe the Covenant was, that he ſhould not alien without Licence, and the Breach was, that he made a Leaſe contra Formam & Effectum Conventionis prædictæ, and does not ſay abſque Licentia; Held naught, and Judgment for the Defendant. ——— Skinn. 120. pl. 15 S. C. that the Plaintiff not alleging the Releaſe to be without his Aſſent, for ought appears it may be with it, and ſo no Breach of Covenants. ——— 2 Show. 309. pl. 319. S. C. but S. P. does not appear.

44. Covenant &c. upon a Leaſe, wherein the Defendant covenanted *to repair the Buildings with all needful Reparations, principal Timber only excepted*; and the *Breach* aſſigned was, *and that after the Demiſe 2 Barns, Parcel of the Tenements demiſed, were in Decay for want of Thatching and Walling, and not for want of principal Timber.* The Defendant Proteſtando that the Barns were not in Decay, *pleads that he was ready to repair* &c. where neceſſary, (principal Timber only excepted) *but there was a Neceſſity of two principal Beams of Timber to ſupport the ſaid Barns, of which the Plaintiff had Notice, but refuſed to deliver them*; and upon a Demurrer to this Plea the Plaintiff had Judgment, becauſe the Defendant gave *no Anſwer to the Breach particularly alleged* by the Plaintiff, *that the Barns were in Decay for want of Thatching and Walling*, and not for want of Timber. 3 Nels. Ab. 122. pl. 3. [Mich. 3 Jac. 2.] cites Lutw. 308. Brailsford v. Parſons.

45. Covenant &c. on a *Leaſe of an Houſe* for Years, wherein the *Defendant covenanted to repair it at his own Charge, and all Aqueducts, Bridges, and Fences &c. with Banking, Cleanſing, and Fenciug &c. during the Term*; the *Breach* aſſigned was, *that the Houſe and 20 Perches of Bank, 10 Bridges, and 40 Perches of Fence were broken, pulled up, broke down and ſpoiled.* Exception was taken to this Declaration, that the Breach aſſigned ſo generally was not good; but adjudged that the Declaration was good, the Breach being aſſigned *according to the Words of the Covenant.* 1 Lutw. 326. Hill. 3 & 4 Jac. 2. B. R. Lee v. Johnſon.

46. A. covenanted with B. *to obtain a Grant of Lands from C.* A is bound though *C. has no Title.* Comb. 172. Mich. 1 W. & M. in B. R. Scounden v. Hawley.

47. Covenant *to permit the Defendant to carry away Trees*; *Breach* quod *non permiſit, ſed obſtruxit & obſtupavit*; held well upon Demurrer, and Judgment for the Plaintiff. 1 Show. 252. Hill. 2 W. & M. Dye v. Wells.

48. Breach of Covenant may be well aſſigned *in the Words of the Indenture* tho' there are disjunctive Words in the Covenant. Carth. 124. Paſch. 2 W. & M. in B. R. Rawlins v. Vincent.

49. *Covenant to keep in good Repair the Houſe, Outhouſes and Stables*; and the Breach aſſigned was, that the Defendant had *permitted the Racks in the Stable to be in Decay.* After Verdict it was moved, that the Plaintiff *ſhould have ſet forth, that the Racks were fixed in the Stable*, and ſo Part of the Freehold, for they might be in the Stable and lay looſe, and Pollexfen Ch. J. was of that Opinion; but the other Juſtices conceived, that it ſhould be *intended that they were fixed for Uſe there*, and it would be very remote to give it any other Conſtruction; and ſo Judgment was given for the Plaintiff. 2 Vent. 214. Mich. 2 W. & M. in C. B. Anon.

50. In Covenant &c. the Plaintiff declared, that the *Defendant* had *covenanted for herſelf, her Executors, Adminiſtrators and Aſſigns, that ſhe would permit the Plaintiff to make a Drain* &c. and the *Breach* aſſigned was, *that ſhe aſſigned the Lands where the Drain ſhould be made to one T. who would not permit the Plaintiff to make the Drain*; there was a Plea, and Replication, and Demurrer; and it was objected againſt this Decla-

claration that it was ill, becauſe the Covenant was for the Defendant &c. or her Aſſigns, to permit &c. and the Breach is laid in the Aſſignee's not permitting, and it appears by the Pleading that the *Aſſignment made to T. was diverſe Years before the Demiſe made to the Plaintiff*, and this Covenant cannot extend but only to the Aſſigns of the Defendant after the Leaſe made. Beſides, to ſay Non permiſit, without ſhewing ſome ſpecial Diſturbance, and which ought to have been particularly ſet forth, that the Court may judge of it, is ill; and Judgment accordingly. 2 Vent. 278. Hill. 2 & 3 W. & M. in C. B. Targett v. Lloyd.

1 Salk. 196, 197. pl. 2. S. C. the Exception taken to the Aſſignment of the Breach in not ſhewing a Diſturbance or other ſpecial Damnification, without which the Rent being behind is no Breach, was taken by the Court, and they took this Diverſity, Where the Counter-bond or Covenant is given to ſave harmleſs from a penal Bond before the Condition broken, there if the penal Sum be not paid at the Day, and ſo the Condition not preſerved, the Party to be ſaved harmleſs does by this become liable to the Penalty, and ſo is damnified; but if the Counter-bond be given after the Condition of the Obligation is broken, or to ſave harmleſs from a ſingle Bill without a Penalty, there the Counter-bond cannot be ſued without a ſpecial Damnification. —— 4 Mod. 249. S. C. accordingly.

51. *Covenant* by the Aſſignee of a Term againſt the firſt Leſſee, in which he covenants, that the Plaintiff ſhall enjoy *free and clear of all Incumbrances, and ſaved harmleſs and indemnified from all arrears of Rent*, and aſſigns for *Breach, that* 64 *l. Rent was arrear*, and that he deſired the Defendant to pay it, but he did not do it; the Defendant *pleads, that as to* 60 *l. Pare of* the ſaid 64 l. that *he had left it in the Hands of the Plaintiff, ea Intentione* that the Plaintiff *ſhould pay it to the Leſſor, and as to the* 4 *l. Reſidue* of it, that *he had paid it himſelf to the Leſſor* &c. to which the Plaintiff demurred, becauſe *ea Intentione ad ſolvend* is uncertain; for his Intention is not a Thing iſſuable; Sed non Allocatur; for he might reply, *Non reliquit Modo & Forma*, and thereupon Iſſue might be joined, and upon this Iſſue he might give in Evidence any Matter to prove his Intention; and it was excepted to the Declaration, becauſe *no Damnification is ſhewn*, for it is not like to a Condition of a Bond broken, for there is a Damage immediately by the Parties being ſubject to the Penalty, but it is otherwiſe here, till an Action brought, or Diſtreſs taken, or other Damages accrued; and Roll, Tit. Condition, Cooper and Pollard 433. was cited, which was the ſame Caſe in Effect; and another Caſe lately adjudged upon the ſame Reaſon. Skin. 397. pl. 31. Mich. 5 W. & M. in B. R. Griffin v. Harriſon.

52. The Plaintiff declared, that the Defendant covenanted *to pay yearly during the Plaintiff's Life at* the two Feaſts of *Michaelmas and Lady-Day*, 3 *l.* 6 *s.* 8 *d. by equal Portions*, and aſſigned for *Breach, that* 3 *l.* 6 *s.* 8 *d. for a Year at Lady-Day, laſt was in arrear and unpaid*; the Defendant demurred and objected, that it does not appear when the Money became due; for it might be behind and unpaid at Lady-Day, and yet might become due at Michaelmas or Lady-Day before; but the Court held this well enough upon a general Demurrer, and gave Judgment for the Plaintiff. 1 Salk. 139. pl. 3. Trin. 6 W. & M. in B. R. Stagg v. Hind.

5 Mod. 133. S. C. adjudged, and ſame Diverſity taken. —12 Mod. 86 S. C. and ſame Diverſity.

53. Debt upon Articles of Agreement, by which the Defendant was Defendant was *to tender a Conveyance to the Plaintiff, his Heirs or Aſſigns*; and the *Breach* aſſigned was, *that the Defendant did not tender a Conveyance to the Plaintiff*; and it was objected, that this Breach was not purſuant to the Covenant by which he is to tender to the Plaintiff or his Aſſigns. But per Cur. the Difference is between doing a Thing to a Man or his Aſſigns, and by a Man or his Aſſigns. In the laſt Caſe the Breach muſt be in the Disjunctive, that it was not done by him or his Aſſigns, but in the firſt Caſe it is ſufficient to ſay, that it was done to him; for an Aſſignment ſhall be intended to be done to the Plaintiff himſelf, and if he aſſigns his Intereſt then to the Aſſignee, and if he did aſſign his

his Intereſt that ought to be ſhew'd on the Side; And ſo a Judgment in C. B. was affirm'd. 1 Salk. 139. pl. 4. Mich. 7 W. 3. B. R. Smith v. Sharp.

54. In an Action of Covenant the *Breach may be aſſigned as large as the Covenant is, for all is recoverable in Damages*, and thoſe Damages ſhall be for the real Damages which the Party can prove that he has actually ſuſtained. *But in Debt upon a Bond conditioned to perform Covenants in a certain Indenture ſpecified*, there a *preciſe Breach muſt be ſhewn*, becauſe a Breach is Forfeiture of the whole Bond; Per Cur. Ld. Raym. Rep. 107. Mich. 8 W. 3. in Caſe of Brigſtock v. Stannion.

It was held per Cur. that *upon a Bond to perform* Covenants you muſt *aſſign but one Breach*; *but in* an Action *of Covenant as many as you will.* Freem. Rep. 157. pl. 174. Paſch. 1674. in C. B. in Caſe of King v. Gogle.

55. 8 & 9 *W.* 3. *cap.* 11. *S.* 8. Enacts, that *in all Actions in any of his Majeſty's Courts of Record, upon any Bond, or on any Penal Sum, for Non-Performance of Covenants, the Plaintiff may aſſign as many Breaches as he ſhall think fit, and the Jury upon Trial of ſuch Action ſhall aſſeſs, not only ſuch Damages and Coſts as have been uſually done, but alſo Damages for ſuch of the ſaid Breaches as the Plaintiff ſhall prove, and like Judgment ſhall be entered on ſuch Verdict as hath been uſually done in ſuch Actions; and if Judgment ſhall be given for the Plaintiff on a Demurrer, or by Confeſſion, or Nihil dicit, the Plaintiff upon the Roll may ſuggeſt as many Breaches as he ſhall think fit, upon which ſhall iſſue a Writ to the Sheriff, to ſummon a Jury to appear before the Juſtices of Aſſiſe, or Niſi Prius, to enquire of the Truth of thoſe Breaches, and to aſſeſs the Damages.*

56. By the 8 & 9 *W.* 3. *cap.* 10. *and* 4 & 5 *Annæ cap.* 16. *the Plaintiff may aſſign as many Breaches as he pleaſes on Bonds to perform Covenants &c.*

57. Covenant was brought on a Penalty of certain Articles, wherein the Defendant had agreed *to pay ſo much per Chaldron for all Coals laden either in Newcaſtle or in the River Tyne, and brought to London*; the *Breach* aſſigned was, *that the Coals were laden on ſuch a Ship infra Portum de Tinmouth, (viz.) at North-Sheilds, and brought from thence to London.* The Defendant demurred, becauſe it did not appear that Tinmouth is upon the River Tyne, and ſo the Breach not well aſſigned, and the Court cannot take Notice of it judicially, and therefore inclined againſt the Plaintiff, but gave Leave to diſcontinue on Payment of Coſts. 5 Mod. 352. Trin. 9 W. 3. Toddard v. Middleton.

58. Defendant *covenanted* with the Plaintiff, that he *would pay him* 100 l. in Money, and give him Credit for 100 l. more *upon* the Plaintiff's *aſſigning him* 1000 *l. Stock* in the Bank of England, and that the *Defendant would accept the ſame upon Notice on or before 24th of May next* following. In Covenant *Plaintiff alleged Notice* to Defendant, *that* Plaintiff would *be ready to make the Transfer* on the ſaid 24th of May, but the Defendant did not come to accept, and Non-payment of Money aſſign'd for Breach &c. And per Cur. the Breach is ill aſſigned, for they ſhould aſſign for Breach, that they had *tendred a Transfer, and that Defendant did not accept*, for there was nothing to be paid but after Transfer. 12 Mod. 248. Mich. 10 W. 3. Shales v. Seignoret.

59. In *Debt on Bond to perform in Covevants*, the *Replication* muſt ſhew a certain Breach; But in Covenant it is enough to aſſign a general Breach; Per Holt Ch. J. 1 Salk. 140. pl. 5. Trin. 11 W. 3. B. R.

Ld. Raym. Rep. 107, 108. S. P. by Treby Ch. J.

60. *Apprentice covenanted with his Maſter not to buy or ſell without the Maſter's Leave, within two Years*; in Covenant the *Breach* aſſigned was, *that the Defendant Diverſis Diebus & Vicibus, between ſuch a Day and ſuch a Day, ſold to H. and other Perſons unknown, Goods to the Value of* 100 l.

Ld. Raym. Rep. 478. S. C. and ſays, that another

Breach was laid for having bought Goods in the ſame Manner; and adjudged accordingly.

100 l. After Verdict for the Plaintiff it was moved in arreſt of Judgment, that *the Breach was incertain, both as to Times and Perſons*; But per Holt it is certain enough; For it is ſo deſcribed, that if another Action be brought the Defendant may plead a former Recovery for the ſame Cauſe, and aver this to be the ſame Selling; to which Gould J. agreed, and that the Action here being only for Damages it is well enough; And Judgment for the Plaintiff. 1 Salk. 139. pl. 5. Trin. 11 W. 3. B. R. Farrow v. Chevalier.

61. Covenant *to grind all his Corn* which he *ſhould uſe in his Houſe at Plaintiff's Mill*; Breach aſſigned, that there were 500 Barrels of Wheat ground and uſed in Defendant's Houſe which he did not grind at Plaintiff's Mill; but ill, it not being ſaid it was his Corn. 12 Mod. 327. Mich. 11 W. 3. Hamley v. Hendon.

Ld. Raym. Rep. 620 S. C. & S. P. per Holt, as to its being without a Verdict; but however, it is aided by the Verdict, and Judgment for the Plaintiff.

62. Aſſumpſit *to deliver Corn on or before* the 5th of January into a Barge to be brought by the Plaintiff to receive the ſaid Corn. The *Breach* aſſign'd was, that he *did not deliver on* the 5th of January; it is good without a Verdict, becauſe there muſt be a *Concurrence of both Parties*; Per Holt. 1 Salk. 140. pl. 6. Mich. 12 W. 3. B. R. Harmon v. Owden.

2 Lord Raym. Rep. 1125. S. C. and held that the Breach is certainly and well enough aſſigned.

63. In Covenant for not repairing the *Heir aſſigns Breach* that the Premiſſes were out of Repair, tali Die & per Decem Annos ante tunc *which included his Anceſtors Time*, and held good. 1 Salk. 141. Paſch. 4 Ann. B. R. Vivian v. Campion.

94. A Covenant was, *that the Defendant ſhould Dance, Sing and Act, under the Society of Comedians, and obey Orders; and ſhould Act and be Aſſiſting to no other Theatre, but what was appointed by R.* and the *Breach* aſſigned was *that he Acted at Oxford, without the conſent of the Plaintiff.* The Defendant demurs to the Declaration; and Pengelly for the Defendant excepted to the *Declaration.* 1ſt. That it *it is ſet out with Poſt hæc* &c. which muſt be conſtrued from the filing of the Declaration (or bringing the Writ) and it ſhould have been Poſt confectionem indenturæ, i. e. That he the ſaid W. did Covenant that he, for five Years after the making, would not Act &c. 2dly. This Breach is not well aſſigned; becauſe it does *not appear that the Play he Acted was publick*, and if not ſo it was no Damage to the Plaintiff, and the deſign of the Covenant was not to reſtrain any Dancing Acting &c. unleſs where it drew others (to lay out their Money at other Playhouſes) from the Play-houſe of R. Salkeld contra that this Breach is well aſſigned according to the Covenant, and it is not material whether the Acting were for Gain or not, but take it to be for no Gain, 'tis yet Prejudicial to the Plaintiff, for no Body will ſee his Play when they can ſee another for nothing. Holt and Powel held, that quod Poſt hæc non ageret &c. in the Declaration ſhould have been Quod abinde non ageret &c now *Poſt hæc was right in the Recital of the Covenant but wrong in the Declaration*; *becauſe* Poſt hæc *muſt be taken to be after the preſent Time*; So that the Breach is laid to be after the Declaration. But it was adjourned tho' the Court thought it could not be made good. 11 Mod. 133. pl. 13. Trin. 6 Ann. B. R. Rich v. Wilks.

65. Covenant *to leave the Premiſſes in good repair at the end of the Term* &c. *Breach aſſign'd that by one Month before the end of the Term they were not in repair in any Part thereof, contrary to the Form and effect of the Covenant*; Exception was for that they ought to have ſaid that the Defendant did not leave that in good repair at the end of the Term, ſed non allocatur. Trin. 10 Ann. B. R. Hamond v. Royſton.

66. Cove-

66. Covenant by Leſſor with his Leſſee, *that he ſhould repair the Premiſſes demiſed before Michaelmas next. Breach* aſſign'd by Leſſee, *that the 28th September the Premiſſes were out of repair to be done by the Leſſor according to the Covenants* contain'd in the Deed. On Demurrer to the Declaration, Judgment was for Defendant, for this is altogether uncertain, and it is but Argumentation, that the Leſſor had not repair'd; the Breach ſhould be aſſign'd in the Words of the Covenant, that he did not repair. There is a Difference between a Covenant Executory and one not, and ſaying (according to the Covenant) is uncertain. Paſch. 10 Ann. B R. Mitchel v. Hamond.

67. A *Leſſee* for Years Covenants *that it ſhall be lawful for W. and two others his Leſſors, their Executors, Adminiſtrators or Aſſigns, or any of them with Workmen, and other Company to enter and view the Premiſſes if in repair* &c. *W. brings Covenant* and aſſign'd a *Breach, that he with Workmen came* to the Defendants Houſe ſuch a Day and at ſuch an Hour *and requeſted* him *that they might enter and* that the *Defendant recuſavit et non permiſit, and that W. and the two other Leſſors came the Day and Hour to the Defendant's Houſe, and requeſted, and Defendant recuſavit &c. without ſaying poſtea Scilt.* &c. Defendant *pleads to the whole, and ſays he did not refuſe the Plaintiff to enter*, but anſwers nothing as to the 2d Breach aſſign'd &c. Sed per Cur. It is a good Plea; for *the two Aſſignments* in the Declaration *are but one Breach*, it being all ſaid to be at the ſame Time and Hour for all three might come together and requeſt, and not W. firſt, and then he and the other two afterwards &c. Mich. 10 Ann. B. R. Wright v. Nicholls.

68. In aſſigning of a Breach *if there be a varying between the Aſſignment and the Words of the Covenant, ſuch a Fact muſt be aſſigned as is a Breach in Law of the Covenant*; per Parker C. J. Paſch. 11. Ann. B. R.

69. Leſſee covenanted to lime and dung the Land durante Termino, Leſſor died within the Term, and his Heir brought Covenant and aſſign'd the Breach, that after the Deſcent of the Land the Defendant did not Durante Termino Lime and Dung the Land. The Court held the Breach not well aſſign'd; becauſe the not Dunging it and Liming it ſince the Deſcent is no Breach of the Covenant, if it was limed and dung'd ſo ſufficiently before, that it did not need it. Adjornatur. 10 Mod. 158. Paſch. 12 Ann. B. R. Sail v. Kitchingham.

Per Eyre J. the Plaintiff ſhould have ſaid that Defendant did not do it during the Term; For the Breach ought to be aſſign'd in the Words of the Covenant; And per Parker Ch. J. he ſhould have ſaid that Defendant did not lime them at all, and that the Cloſes remained unlim'd during the Reſidue of the Term; that where a Man is to do one Particular Act during the Term, and which is not an Act of Continuance, once doing it within the Term is well enough. MSS. Rep. S. C.

70. In Covenant the Plaintiff declares that he the Plaintiff, did Covenant with the Defendant *to transfer at a certain Day, ſuch a ſhare of Stock with the Dividends and Profits that in the mean time ſhould ariſe upon the ſame to the Defendant at the South Sea Houſe, at the uſual Hours, when the Books of the Company are open, and that the Defendant did Covenant to accept the ſame, and pay ſo much to the Plaintiff for it, provided the Plaintiff did tender it at the Time and Place above mentioned*; and he *avers that he was at the South Sea Houſe at the Day, at the uſual Hours* when the Books are open, to tender the ſaid Share of Stock with the Dividends and Profits of the ſame to the Defendant; but that the Defendant did not accept the ſame, Sed penitus Recuſavit & adhuc recuſat acceptare &c. The Defendant demurs ſpecially. Per Cur. the Plaintiff has not intitled himſelf to his Action, for that he has *not ſhewed, what are the uſual Hours of* keeping the Books open, *and that he was at the Place a convenient Time before ſhutting the Books, ready to make a Tender*;

and

and the Refuſal being not expreſly laid to be at the Time and Place, ſhall not be ſo intended ; it it had been ſo laid, it would have been good. Gibb. 61, 62, 63. pl. 9. Paſch. 2 Geo. B. R. Bowles v. Markwith.

71. Where the Covenant was that Leſſee ſhould quietly enjoy two Cloſes *againſt all claiming or pretending to claim any Right in* them, he aſſigned the Breach thus *that J. S. having or pretending to have a Claim Time out of Mind did enter upon the ſaid Cloſes*, and held well aſſigned; and that this Caſe differed from the Caſe of Kerby v. Hanſaker, for it is impoſſible here that the Diſturber could claim under the Plaintiff himſelf, by reaſon of the Words *Time out of Mind*. 10 Mod. 383, 384. Hill. 3 Geo. 1. B. R. Chaplain v. Southgate.

(M. a) Pleadings and Aſſignments of the Breach. Joint and Several.

1. TWO made *Indentures* between them *quod cum uterque Obligatus fuit alteri in two ſingle Obligations* they *Covenanted* between them *Quod ſi Uterque eorum ſteterit* et obedierit *Arbitrio* et Ordinationi *A. et B.* &c. that *then the Obligation of him who ſhall be void and* the Obligation *of him who ſhall not perform it ſhall be in force*, and therefore per Littleton each has bound himſelf as well for his Companion that he ſhall perform the Award, as that he himſelf ſhall perform it, and the *Defendant pleaded Performance and did not ſay that the Plaintiff had perform'd alſo* and yet good per tot. Cur. For it ſhall be *intended that each ſhall perform his own Part*, for theſe Words quod *uterque ſteterit* is as much as if he had ſaid quod *uterque eorum pro parte ſua ſteterit* ; For it is no more but every one for his own Part, and theſe Words quod uterque Obligatus alteri in 100 l. is good alſo, and ſhall not be taken by this, that both of them are bound to each of them, but ſhall be taken, quod uterque *pro ſe* tenetur alteri *ſeparaliter*. Br. Covenant pl. 27. cites 39 H. 6. 9.

2. *And* alſo in Indentures they ſay in the end, *ad quas quidem conventiones perimplendas uterque teneatur alteri* in 100 l. this is good and every one by himſelf ſeparately is bound to the other; For thoſe Words are good ſeveral Words in themſelves. And ſo ſee that thoſe ſhort Words are ſeveral in themſelves as well as if each ſeverally by two Covenants had Covenanted with the other. Quod Nota, per Cur. Ibid.

3 Le. 160. pl. 209. C. B. Beckwith's Caſe, adjudg'd for the Plaintiff; but reverſed in Error in Cam. Scacc. the Action in C. B. being brought by one of the Covenantees and adjudged there for the Plaintiff.

3. R. B. by Deed *covenants with 4 Perſons and their Aſſigns & ad & cum quolibet eorum, that he was lawfully and ſolely ſeiſed* of a Rectory. *Two of the Covenantees bring Covenant* againſt R. B. and held ill, becauſe it was a Joint Covenant and the others ought to have joined. *Where it appears that every of the Covenantees hath a ſeveral Intereſt or Eſtate, the Covenant ſhall be ſeveral* in reſpect of their ſeveral Intereſts; and if Covenant be with the Covenantees et cum quolibet eorum, theſe Words make the Covenant ſeveral, As if a Man *demiſe Black Acre to A. and White Acre to B. and Covenants with them et quolibet eorum*, &c. the Covenant is ſeveral, *but if* the Demiſe had been *to them Jointly, the Words cum quolibet eorum are void* ; for a Man by his Covenant in reſpect of ſeveral Intereſt cannot make it firſt Joint, and then ſeveral by the words cum quolibet eorum. 5 Rep. 18. b. 19. a. Mich. 29 & 30 Eliz. in Cam. Scacc. Slingsby's Caſe.

——2 Le. 47. pl. 60. Anon. S. C. in the Exchequer, and adjudg'd there by the whole Court, that Covenant did not lie by one of them only but ought to be brought by all.——S. C. cited by Coke Ch. J. 3 Bulſt. 68.——S. C. cited by Fleming Ch. J. Bulſt. 26.

4. One

4. One Lydiate and 6 orher *Merchants covenant ſeparatim with the Maſter and Owners of a Ship by a Charter Party, that one ſhall pay ſo much, another ſo much* &c. *for Carrying of Goods*, and the *Maſter and Owners covenanted* with the Merchants *to Ship certain Merchandizes to ſuch a Port* &c. Held that though the Merchants join in the Covenant (id eſt) conveniunt ſeperatim, yet this Word *ſeperatim* makes this ſeveral Covenants and not a joint Covenant, and whereas it was further added, performationem omnium & ſingularum Conventionum quilibet mercator Seperatim obligat ſeipſum &c. in double the Freight. This is ſeveral too by reaſon of the Word ſeperatim, and this Word ſhall refer to the ſeveral Covenants before, and *when Covenants are ſeveral they are as ſeveral Deeds, and the Covenant here on the Part of the Maſter and Owners is Joint.* 5 Rep. 22, 23. Hill. 39 Eliz. C. B. Mathewſons Caſe.

Cro. E. 408 pl. 20 Mathewſon v. Lydiate S.C. adjornatur. —— Ibid. 470. pl. 22. S. C. but not reſolv'd the Court differing in Opinion, and therefore moved the Parties to compound. —— Ibid. 546. S. C.

adjudg'd that it is ſeveral. —— S. C. cited per Williams J. Bulſt. 26. to be adjudg'd that the Word (Separatim) makes the ſame to be ſeveral Covenants, and not Joint.

5. The Plaintiff *declared that A. and B. dimiſerunt*; This *imports a Joint Covenant as to the Intereſt granted, but as to Acts ſubſequent it imports a ſeveral Covenant.* 1 Salk. 137. Mich. 1 W. & M. in B. R. Coleman v. Sherwin.

Carth. 97. S. C. accordingly. —— Comb. 163. S. C. — Show. 79. S. C.

6. If *A. conveys* 3 *Manors to B. C. and D. ſeverally, and covenants with them & Quolibet eorum*, that he has convey'd to them a good Eſtate; Theſe are ſeveral Covenants and not a Joint Covenant. Jenk. 262. pl. 63.

7. E. ſeiſed in Fee of a Manor *convey'd* it *to the Uſe of himſelf for Life, and then to his Wife till T. his Son ſhould be* 24; *and died. T. granted a Rent-Charge to N. and covenanted that he had not altered any Eſtate made by his Father, and had done no Act whereby it ſhould be altered, and that the Land ſhould be open to the Diſtreſs of N.* Adjudg'd that there were ſeveral Covenants; For the two firſt were Negative, and the laſt Affirmative. Litt. Rep. 63. Arg. cites Mich. 1 Jac. C. B. Ersfield v. Napper.

Ibid. 207. S. C. cited by Harvey J. that T. recited that he was ſeiſed of ſuch Eſtate as E. his Father had conveyed to him,

and ſays, that this Grant was before T. was 24, and that T. covenanted that he had good and lawful Power to grant notwithſtanding any Act done by him, and that the Land charged ſhall be open and ſufficient to his Diſtreſs; and for that the Land was not open to the Diſtreſs, Action was brought; that T. pleaded that he had done no Act, but that the Land ſhould be open, and adjudged againſt him, that the Words (Notwithſtanding any Act &c.) do not extend to this laſt Covenant as to the Land's being open, which is abſolutely of itſelf.

8. The Plaintiff had a *Reverſion of two Houſes, one in Fee*, and *the other for Years*, and *makes a Leaſe for Years, with Covenant* [* *by the Leſſee*] *for Reparations of both* Houſes; and Queſtion was, whether the Plaintiff ſhould have one Action, or ſeveral Actions, and adjudged that he ſhould have a joint Action for both. Brownl. 20. Mich. 7 Jac. Pyot v. Ld. St. John.

* 2 Bulſt. 102. St. John v. Piot, S. C. in B R. and Judgment in C. B. affirmed.

9. *Indenture* of Covenant *between A. and B. of the one Part, and C. of the other Part.* Among other Covenants one was, *it is agreed between the Parties, that C. enter into Bond to pay A.* 160 *l. by ſuch a Day, which was not paid. A. dies.* B. and not the Adminiſtrator of A. ſhall have the Action on this Covenant; For the 160 l. payable to A. in his Life being to be obtain'd by his Suit on this Indenture, no one can have Action upon it, but thoſe who are *Parties during their Lives, and after their Death the Executor or Adminiſtrator of the Survivor.* Yelv. 177. Trin. 8 Jac. B. R. Rolls v. Yate.

2 Brownl. 207. Yates v Rolls, S. C. adjudg'd; for it is a joint Covenant. —Bulſt. 25, 26 S. C. held accordingly, and ſo Judg-

ment in C. B. affirmed. And per Fleming Ch. J. where there is Matter precedent, and apt Words to draw

draw ſeveral Conſiderations, as in * Matthewſon's Caſe before, there ſeveral Actions of Covenant are to be brought; but otherwiſe it is where no ſuch Matter appears, as in this principal Caſe, and therefore the Covenant here being joint, the Plaintiffs ought to join in the Action of Covenant, and ſo the Judgment well given for them, and to be affirmed. Fenner J. ſaid, that if a Man be bound to three, Solvendum to one of them, this is joint, and they ought all of them to join in the Action, and ſo in the principal Caſe here. * See pl. 4.

Keb. 284. pl. 91. S. C. adjudged for the Defendant.

10. *Covenant* againſt B. and C. on a Covenant in an Indenture *Artificially to erect an Houſe* &c. *Judgment was againſt B. by Default. C. pleaded that he and B. had artificially erected &c.* and ſo to iſſue, and *found for C.* A Writ to inquire of Damages was mov'd for againſt B. becauſe the Act to be done was to be done by both, and B. is condemn'd of Non-feaſance by the Judgment; But the Court denied it, and held that B. ſhould not be charg'd with any Damages; For it appears that the Covenant is perform'd, and C. ſhall have Coſts againſt the Plaintiff. Sid. 76. Paſch. 14 Car. 2. B. R. Boulter v. Ford.

11. And Windham J. held, that if C. had pleaded that the Houſe was artificially erected by him, (without ſaying by them) and the Jury had found accordingly, it had been good Performance, becauſe the Thing requir'd to be done is done, and therefore there is Difference between this Caſe and the Caſe where *two covenant to go to York*, there the one cannot plead that he went, but muſt plead that they two went; For there is a *Perſonal Act to be done*; and the one cannot go to York by Deputy as he may erect an Houſe. Sid. 76. Paſch. 14 Car. B. R. Boulter v. Ford.

12. The Court conceived, a *Covenant to do ſeveral Things* is as ſeveral Covenants, and though he might have aſſigned one Breach, yet ſeveral are good enough; Judgment for Plaintiff. 2 Keb. 69. pl. 43. Paſch. 18 Car. 2. Young v. Golling.

13. A Covenant was *between A. of the one Part, and B. and C. of the other Part, & quemlibet eorum.* A. brings Covenant againſt B. only, and good. 2 Lev. 56. Paſch. 24 Car. 2. B. R. Bolton v. Lee.

14. *A. and B. covenant with C. for themſelves, and every of them, that if they renew ſuch a Leaſe, they will aſſign the Term to C. A. dies*, and the Covenant being broken, *C. ſues the Executor of A.* Objection that this is a joint Covenant, and ſo ought to ſurvive in Charge to B. But per Cur it is joint and ſeveral, for (every of them) is as much as for (each of them) and ſo the Party hath Election to ſue either the Executor or the Survivor. Freem. Rep. 248. pl. 262. Hill. 1677. May v. Woodward.

15. A Covenant which is joint in itſelf ſhall be taken ſeverally when the *Breach* aſſign'd is *a ſeparate Act of one of the Parties*; per Holt Ch. J. Cumb. 164 Mich. 1 W. & M. in B. R. Coleman v. Sherman.

But if *one only of the Leſſors had Title* to demiſe, then the Action ſhould have been brought againſt him only; And if *neither* of the Leſſors *had any Thing*, then an Action ought to be brought againſt them all; per Holt Comb. 164. S. C.

16. *A. B. and C.* in Conſideration of ſuch a Rent reſerved by a *Deed-Poll conceſſerunt & dimiſerunt* to the Plaintiff, and on this Covenant in Law the Plaintiff brought an Action againſt A. and aſſigned for *Breach that A.* and another by his Command *entred on the Plaintiff*; and he ſhewed further, that *A. B. and C. had nothing but that one D. was ſeiſed in Fee.* A. the Defendant pleaded that B. and C. were ſeiſed, and had Power to demiſe, and traverſed that D. was ſeiſed, and likewiſe traverſed that the Defendant enter'd and kept the Plaintiff out; and upon Demurrer to this Plea it was adjudged, that this *Action* muſt be *founded upon the Word Dimiſerunt*, which is *a Covenant in Law*; for there was no expreſs Covenant, and therefore as the Intereſt granted to the Defendant by that Word is joint, ſo muſt the Covenant be; and if ſo, then this Action being brought againſt the Defendant alone, cannot be maintained, but it *ought to be brought jointly againſt A. B. and C.* who were the Leſſors. 1 Salk. 137. Mich. 1 W. & M. in B. R. Coleman v. Sherwin.

—— And Holt Ch. J. opening the Matter, ſaid, that this Action was brought on a Covenant

Covenant in Law made by the Word Conceſſi; and it appears here, that the Demiſe was a joint Demiſe made by the Defendants Sherwin, Dover, and Ensfield, and therefore this Covenant implied by Law, ought regularly to be joint; Sed per Cur. in ſuch a particular Caſe as this is, where *one* of the Leſſors *had actually done wrong by his Entry* on the Leſſee *without the Aſſent of the others*, the Covenant in Law ſhall not be taken to be joint, ſo as to charge the other Leſſors with this *Perſonal Wrong* of their Companion; for it is unreaſonable that the Innocent ſhould be puniſhed with the Guilty, therefore as to that Breach, (viz.) the Entry of Sherwin, and turning the Plaintiff out of Poſſeſſion, the Action is well brought againſt him alone; but as to the two other Breaches aſſigned in the Declaration, this Action of Covenant ought to be brought againſt the Leſſors, for as to that Purpoſe the Covenant in Law is joint, and not ſeveral; for in ſuch Caſe there is no particular Perſonal Tort done by one more than another, and if ſeveral Actions ſhould be permitted in ſuch Caſes, the Plaintiff would recover Damages two or three Times for the ſame Thing.——Carth. 98, 99. S. C.

(N. a) Pleadings. In Bar &c.

1. TReſpaſs *of taking for Toll contrary to the Grant of H. 3.* the *Defendant pleaded Grant of King John of the aforeſaid Cuſtom*; the *Plaintiff alleg'd Compoſition between the two Vills, and that the Defendant by the taking had broke the Compoſition*; And per Knivet clearly he ſhall plead it as here, and ſhall not be drove to Writ of Covenant, and by Conſequence may rebut in this Caſe, and ſhall not be drove to Writ of Covenant. Br. Barr, pl. 109. cites 39 E. 3. 13.

2. If a Leaſe for Years be by *Deed*, and *that the Leſſee ſhall not be charged of Reparations*, he ſhall rebut by this in Action of Waſte, and ſhall not be put to Action of Covenant. Br. Covenant, pl. 42. cites 21 H. 6. 46.

3. Where a Man *grants to his Tenant that he will not diſtrain him before ſuch a Feaſt*, there if he diſtrains he ſhall have only an Action of Covenant; per Fineux Ch. J. But Brook makes a Quære thereof, for he ſays it ſeems that *it ſhall be pleaded in Bar to avoid Circuity of Action*. Br. Barre, pl. 52. cites 21 H. 7. 23.

4. *And* if a Man *leaſes Land for Life or Years, and* after *grants by another Deed that he ſhall not be impeached of Waſte*, there if he brings Waſte, the other ſhall have only Action of Covenant, per Fineux Ch. J. But Brook ſays, that it is uſed to the contrary, for he may plead it in Bar to avoid Circuity of Action. Ibid.

5. If a Covenant be *to make an Eſtate by the Advice of J. S. it ought to be ſhewn what Advice J. S. gave*; Per Hobart Ch. J. Arg. Hob. 295. cites 26 H. 8. 1. and 16 E. 4. 9.

6. In Covenant for not Repairing, *if Damages are recovered*, it was ſaid by Manwood, that by this Recovery of Damages *the Leſſee ſhall be excuſed for ever after from making of Reparations*; So as if he ſuffer the Houſes for want of Reparations to decay, no Action ſhall be afterwards brought thereupon for the ſame, but that *the Covenant is extinct*. 3 Le. 51. pl. 72. Trin. 15 Eliz. C. B. Anon.

7. In *Debt upon an Obligation to perform certain Covenants in a Pair of Indentures*; the Plaintiff aſſigned the *Breach in one of the Covenants, viz. that the Defendant ſhould do all Reparations of ſuch a Houſe demiſed to him, and that he had not repaired, but ſuffered the ſame to decay. Defendant ſaid, that the Plaintiff had acquitted and diſcharged him of the Reparations.* Plaintiff demurred. Manwood ſaid, that the ſame is an Acquittal and Diſcharge of the Reparations, as well for the Time paſt, as for the Time to come, by Force of the ſaid Covenant, and amounts to as much

as

as if he had releaſed the Covenant. Then *it was moved, if the Covenant being broken for want of Reparations?* If now *the Acquittal and Diſcharge, or Releaſe of the Covenant, ſhould take away the Action upon the Obligation which was once forfeited before? And Manwood held that it ſhould not*; for if one be bound in an Obligation for the Performance of Covenants, and before the Breach of any of them the Obligee releaſeth the Covenants, and afterwards one of the Covenants is broken, the Obligation is not forfeited, for there is not now any Covenant which may be broken, and therefore the Obligation is diſcharged; But if the Releaſe had been after the Covenant broken, otherwiſe; all which Dyer and Mounſon conceſſerunt. 3 Le. 69. pl. 105. Mich. 20 Eliz. in C. B. Anon.

8. *Releaſe of all Actions* is no Diſcharge of *Covenants not broken.* And. 64. pl. 138. Mich. 23 & 24 Eliz. Digs v. Chute.

9. It was ſaid to be adjudged, that *in Covenants perpetual, if* they are *once broken, and* an Action of *Covenant brought, and a Recovery upon it,* if they are afterwards broken, a *Scire Facias ſhall be upon the Judgment,* and need not bring a new Writ of Covenant. Cro. C. 3. pl. 7. Hill. 24 Eliz. B. R. Swann's Caſe.

10. Leſſee for Years covenanted *to build an Houſe on the Land within the firſt* 10 *Years.* In Covenant the Defendant *pleaded that the Leſſor entered, and had Poſſeſſion for Part of the* 9*th Year* &c. Per Gawdy *he ſhould have ſhewed, that the Plaintiff would not ſuffer him to build*; And the other Juſtices ſeemed of the ſame Opinion; but would adviſe. Godb. 69. pl. 84. Mich. 28 & 29 Eliz. B. R. Barker v. Fletwell.

Cro. E. 222. Taylor v. Beal, S. C. but ſtated only that the Leſſor by Covenant was to repair, but nothing ſaid as to Leſſee's repairing it;

11. The *Leſſor covenants that the Leſſee ſhall repair the Tenements, when they are ruinous, at the Charge of the Leſſor*; *In Debt for Rent, the Leſſee pleaded that* Matter, and that according to the Covenant *he had repaired* the Tenements, being then ruinous, with the Rent, and demanded Judgment if Action &c. and good; Per Gawdy and Clench Juſtices; cites 11 R. 2. Bar. 102. but Fenner J. contrary, for each ſhall have Action againſt the other, if there be not an expreſs Covenant to do it. Le. 237. in pl. 320. Mich. 32 & 33 Eliz. B. R. Beal v. Taylor.

Gawdy conceived, that the Law gave Liberty to the Leſſee to expend the Rent in Reparations, or otherwiſe the Houſe may fall upon his Head before it be repaired. But Fenner e contra; For if Leſſor will not repair it, Leſſee is to have his Covenant againſt him. Clench agreed with Gawdy, but that Leſſee ſhould have pleaded it, and cannot give it in Evidence on the General Iſſue, (as in this Caſe he had done as ſtated here).

Brownl. 89. Mich. 3 Jac. Jeffery v. Guy, S. C —Yelv. 78. S. C. and Brownl. ſeems only a Tranſlation of Yelv.

12. *In Debt on Bond for Performance* of Covenants the *Defendant pleads a Releaſe*, and Iſſue is join'd upon it, and *found for the Plaintiff*, and he has Judgment, and affirm'd in Error, though the Plaintiff did not allege any Part of the Bond, and a Breach of it in the Defendant; For the *Plaintiff is forced by the Defendant's Plea to anſwer to the Releaſe, and has no Occaſion to ſhew any Breach of Covenant*; For *the Law requires that, when it is pleaded that no Bond was made*, and not where the Bond and Breach are confeſſed, as in this Caſe is impliedly done. Jenk. 280. pl. 4.

Brownl. 89. S. C. but ſeems only a Tranſlation of Yelverton.

13. [The Plaintiff is not bound to allege a ſpecial Breach when the Defendant's Plea contains ſpecial Matter, [As in] Debt upon *Bond for Performance of Covenants in a Leaſe made by A. Tenant in Tail*, in which was a Covenant, *that A. might enter from Time to Time to view the Reparations.* Defendant *pleaded, that A. died, and that B. the Iſſue in Tail entred before any Covenant was broken.* The Plaintiff *replied, that B. came with him on the Lands to view the Reparations, and traverſed that B. entred Modo & Forma prout &c.* The Plaintiff had a Verdict. Error

was

was brought, for that no Breach was alleged of Covenant in the Defendant, and ſo there was no Cauſe of Action. But per Cur it needed not in this Caſe; for by the ſpecial Iſſue tendered by the Defendant, viz. that the Iſſue in Tail made an Entry on him before any Covenant broken, he inforced the Plaintiff to make a ſpecial Replication to the Point tendered, and ſo cannot aſſign any Breach of Covenant, but muſt neceſſarily anſwer to the ſpecial Matter alleged. Yelv. 78. Mich. 3 Jac. B. R. Jeffrey v. Guy.

14. A *Warrantia Chartæ depending* is *no Bar* in Covenant, becauſe they are of ſeveral Matters, one Real, and the other Perſonal. See Hob. 3. pl. 6. Hill. 5 Jac. Pincombe v. Rudge. And ibid. 28. S. C. cited by Hobart Ch. J. And ſee Yelv. 139. S. C.

15. In Covenant againſt Leſſee *for Non-payment of Rent*, he *pleaded*, *Levied by Diſtreſs*. Plaintiff demurr'd, and Judgment for him; for this Plea *is a Confeſſion that it was not paid according to the Reſervation* for the Plaintiff could not diſtrain unleſs it was behind after the Day 2 Brownl. 273. Mich 7 Jac. C. B. Hare v. Savill.

Brownl. 19. S. C Action of Covenant; brought upon an Indenture upon a *ſpecial Covenant to pay Rent* at certain Days therein ſpecified and reſerved. The Defendant *pleads, that no Rent was behind.* The Plaintiff demurs to that Plea; and it was held by the whole Court to be a bad Plea in Covenant, for by that Plea the Defendant confeſſes the Covenant broken, and that Plea tends but in Mitigation of Damages. Brownl. 19. Trin. 7 Jac Hare v. Savil.

16. In *Debt upon an Obligation* with Condition *to perform Covenants in an Indenture of Leaſe*, the Defendant *pleads, that after, and before the Original purchaſed, the Indenture was by the Aſſent of the Plaintiff, and the Defendant cancelled* and avoided, and ſo demands *Judgment of the Action*; and ſeems by Coke clearly, that the Plea is *not good without Averment that no Covenant was broken before the cancelling of the Indenture.* 2 Brownl. 167. Paſch. 10 Jac. in C. B. Anon.

17. Action of Covenant brought, *for that the Defendant did not pay a Rent with which the Land was charged*; the Defendant *pleads he was to enjoy the Land ſufficiently ſaved harmleſs, and anſwers not to the Breach*; and adjudg'd a naughty Bar by the whole Court. Brownl. 22. Mich. 12 Jac. Cowling v. Drury.

18. *Accord with Satisfaction by Deed* is a good Plea in Diſcharge of Covenant, as well before the Breach as after, becauſe it is an Action merely Perſonal, in which only Damages ſhall be recovered, and it enures as Releaſe of Covenant. Palm. 110. Paſch. 17 Jac. B. R. Robards v. Stoker.

In Action of Covenant *a Concord is not pleadable in Bar unleſs* it be *executed on both Parts.* 3 Lev. 189. Mich. 36 Car. 2. C. B. Ruſſel v. Ruſſel.

19. Pleading by way of Bar or Replication that *Teſtatum exiſtit per talem Indenturam* is not good, though in a Declaration it is ſufficient to induce the Action and aſſign the Breach; Per tot. Cur. Cro. J. 537. pl. 2. Trin. 17 Jac. B. R. in Caſe of Bultivant v. Holman.

2 Roll Rep. 110. Buttifant v. Holman, S. C. adjudged in C. B. and affirmed in B. R.

20. Leſſee covenants to do all reaſonable Carriages for his Leſſor *with his Carts* &c. Leſſee pleads he has no Cart &c. A good Plea; for he is not bound to keep Carts &c. on Purpoſe. Lat. 202. Hill. 2 Car. Manners v. Veſey.

21. The Plaintiff brings an *Action for Breach of Covenant upon a Deed*; the Defendant *pleads a parol Agreement afterwards in Diſcharge* of the former Covenant; but the Court held the Plea not good. Sty. 8. Hill. 22 Car. B. R. Forteſcue v. Brograve.

Sty 88 S. C. but no Judgment.

22. In Covenant *for not repairing* &c. the *Plaintiff ſhews for Breach that the Houſe was burnt down through the Negligence of the Defendant &c. and that he did not repair it.* The Defendant *traverſed that it was not burnt down, prout* &c. and adjudged an ill Traverſe; *becauſe the Defendant's not repairing is the ſubſtantial Part*, the other being but Inducement. Hard. 70. cites Paſch. 24 Car. B. R. Allen v. Reeve.

23. In Covenant &c. *for Non-payment of Rent*, the *Defendant pleaded* in Bar, *that the Plaintiff entered into Part of the Land demiſed before the Rent due*, for which the Action was brought, and ſo had ſuſpended his Rent; The Plaintiff *replied, that the Defendant did re-enter, and ſo was poſſeſſed of his former Eſtate.* Upon Demurrer Roll Ch. J. ſaid, the Plaintiff ought to ſhew that the Defendant *entred and continued in Poſſeſſion till after the Rent became due*; therefore Nil capiat per Billam, Niſi. Sty. 432. Hill. 1654. Page v. Parr.

24. In an Action of Covenant on Demiſe of a Free-ſtone-Quarry to the Defendant, the Defendant covenants *not to dig in any other Part of the Common*, and now *Breach* being *aſſigned in digging*, the Defendant *pleads Non locavit the Quarry prædict'*; to which the Plaintiff demurs, the Demiſe being by Indenture, and the Covenant collateral. The Court agreed the Plea frivolous; Judgment for the Plaintiff, Niſi. Keb. 751. pl. 44. Trin. 16 Car. 2. B. R. Armin v. Bowes.

25. In *Debt for Rent* on a Leaſe for Years, the Defendant *pleaded in Bar that the Leſſor did Covenant, that the Leſſee might deduct ſo much for Charges*, and upon Demurrer this was adjudged a good Plea, it being a thing Executory and the Covenant in the ſame Deed, and the Party ſhall not be put to *Circuity of Action* and to bring an action of Covenant. Lev. 152. Mich. 16 Car. 2. B. R. Johnſon v. Carre.

Sid. 289. pl. 5. S. C. ——Gilb. Hiſt. of C. B. 124. cites S. C. and ſays that in Covenant the *Defendant ought to traverſe the Deed or the Breach, and both cannot be involv'd in Non fregit Conventionem.*

26. In Covenant or a Conveyance upon a Covenant, *that the Vendor was ſeiſed in Fee* and *Breach* aſſign'd *that he was not ſeiſed in Fee*, the Defendant *pleaded quod non infregit Conventionem ſuam*, this is ill, being *too General* and argumentative, *upon a Demurrer*, but it is help'd after a Verdict. 1 Lev. 183. Trin. 18 Car. 2. B. R. Walſingham v. Comb.

27. Defendant pleads in Bar of Breach for *Non payment of Rent* a *former Bargain and Sale* of the ſame Land, *without pleading Entry* accordingly, it was ſaid no Entry was requiſite being on the Statute of Uſes. Sid. 399. pl. 6. Hill. 20 & 21 Car. 2. B. R. Banks v. Smith.

3 Lev. 154. Mich. 35 Car. 2. C. B. in Caſe of Beely v Purry S. P. Arg.

28 If *Leſſor after Aſſignment* of the Reverſion *brings Covenant*, Leſſee can't plead that he has aſſign'd over his Reverſion, but either Leſſor or his Grantee, who brings the firſt Action of Covenant and recovers, ſhall Bar the other (viz.) Leſſee ſhall plead ſuch Recovery in Bar to the 2d Action. Sid. 402. per Twiſden J. Hill. 20 & 21 Car. 2. B. R.

3 Keb 40. pl. 10. Trin. 24 Car. 2. B. R. Walton v. Waterhouſe S. C. the Court held that the Defendant muſt ſhew who repair-

29. In an Action of Covenant *to repair from Time to Time a Houſe demiſed*, the Defendant *pleaded that before the Action brought, the Houſe demiſed being burnt in the Fire was repaired in convenient Time*, to which the Plaintiff demurred, becauſe it was *not ſhewn by whom it was repair'd; and in Truth it was rebuilt by the Plaintiff*; and per Twiſden J. this is no Performance of the Covenant, unleſs it be ſhewed to be done by the Defendant himſelf, though Reparation by a Stranger be an Excuſe of Waſte; Sed curia contra, that being repaired it is a good Plea by whom ſoever; but this being a hard Caſe, the Court gave Leave to the Plaintiff to wave his Demurrer, and take Iſſue that he did not repair it

it in convenient Time, the Houſe being yet uncovered. 2 Keb. 535. pl. 53. Trin. 21 Car. 2. B. R. Walton v. Johnſon.

ed it; For if the Plaintiff built it this is no Excuſe; and Judgment for the Plaintiff.——2 Saund. 420. S. C adjudg'd that the Plea was ill, becauſe not ſhewn by whom it was rebuilt; though it was objected that it was not material by whom it was rebuilt; and if by a Stranger it could not be built again by the Defendant; and he having aſſigned all his Intereſt before, it lay not in his Notice by whom it was built, but that it could not be preſumed to be built by the Plaintiff, for that he could not intermeddle with the Poſſeſſion during the Term; But by the Reporter, it being alleged, that the Plaintiff had rebuilt at his own Charge, Hales refuſed to hear the Reaſons, & quaſi in a Paſſion without conſidering the Matter in Law, gave Judgment for the Plaintiff.

30. Debt upon *Bond*, conditioned *to perform Covenants, one of which was for Payment of ſo much Money upon making ſuch an Aſſurance*; The Defendant *pleaded that he paid the Money on ſuch a Day*; upon a Demurrer the Plaintiff had Judgment, becauſe *the Defendant did not ſay in the Plea when the Aſſurance was made, that the Court might judge that the Money was immediately paid purſuant to the Condition.* 2 Mod. 33. Paſch 27 Car. 2. C. B. Duck v. Vincent.

31. It was agreed, that a *Releaſe of all Debts, Duties and Demands, did not releaſe Covenants that were broken*; nor any other Word but the Word Covenant. Freem. Rep. 235. pl. 245. Mich. 1677. Anon.

32. When *Debt on Bond to perform Covenants* in a Deed is brought, and the Defendant cannot plead Covenants performed without the Deed, becauſe the Plaintiff has the original Deed, (and perhaps Defendant took not a Counterpart of it) we uſe to grant *Imparlances* till the Plaintiff brings in the Deed; and upon Evidence if it be proved, that the other Party has the Deed, we admit Copies to be given in Evidence. Per Cur. Mod. 266. pl 17. Trin. 29. Car. 2. C. B. Anon.

33. Where Covenants are *reciprocal*, Non performance by one is no Bar to the Action of the other. 2 Jo. 216. Trin. 24 Car. 2. Shower v. Cudmore.

34. In Covenant the *Breach* aſſign'd was, *that the Defendant did not repair*. The Defendant *pleaded generally Quod reparavit & de hoc ponit ſe ſuper Patriam.* This was held *good after a Verdict.* 2 Mod. 176. Hill. 28 & 29 Car. 2. C B. Harman's Caſe.

35. In Covenant *on an Indenture for Rent, Nil Debet is no Plea*, and Judgment was given for the Plaintiff. 3 Lev. 170. Trin. 36 Car. 2. C. B. Tindall v. Hutchinſon.

36. Covenant *upon a Demiſe for Years, rendring Rent*; and Breach aſſigned for Nonpayment. Defendant pleads, that part of the Rent was to be allowed &c. Per Cur. This a Covenant againſt a Covenant, and Judgment Niſi for the Plaintiff. Comb. 21. Paſch. 2 Jac. 2. in B. R. Burroughs v. Hays.

37. In an Action of Covenant the Plaintiff declared, that whereas by an Agreement in Writing made between him and the Defendant, it was *agreed* between the ſaid Parties *for a Demiſe of a Leaſe for* 99 *Years, of and in a certain Meſſuage &c. under a certain Rent, and the uſual Covenants as in all Demiſes granted by the Truſtees of the Earl of Rocheſter were uſed, omnium quorum conſideratione, the ſaid P. did agree to pay the ſaid C.* 180 *l. at Michaelmas next following, & licet the Plaintiff performed all of his Part, the Defendant had not paid the Money, &c.* the Defendant *pleaded in Bar, that the Plaintiff tempore quo ſupponitur præd' conventionem fieri nec unquam poſtea nihil habuit in Tenementis præd' ſo agreed to be demiſed.* To this the Plaintiff demurred, and Judgment by the whole Court was given for the Plaintiff, for though *that may be pleaded in an Action for Debt for Rent, yet it cannot be pleaded in Covenant for a Sum in Groſs.* Beſides, the Agreement does not neceſſarily import that the Leaſe ſhould be made by the Plaintiff; it may be underſtood, that it was agreed that he ſhould procure a Leaſe for the Defendant. 2 Vent. 99. Mich. 1 W. & M in C. B. Clarke v. Peppen.

2 Vent. 217. Mich. 2. & M. in C. B.——S C cited by Holt Ch. J in delivering the Opinion of the Court Trin. 13 W. 3. Ld Raym Rep. 691. and ſaid that it was a found Judgment.

38. A. covenants with B. *to Pay* him 300 *l. for the Uſe of the Wife of A.* for her Life only, and Covenant brought upon this, and Breach aſſigned, that there was ſo much of the 300 l. arrear; Defendant *pleads* that there was *another Indenture* between him and the Plaintiff *ſince* the Date or Delivery of the Covenant-Deed declared on, *reciting the ſaid Covenant and Agreement* for the Payment of the 300 l. *wherein it was covenanted and agreed, that ſo long as A. and his Wife did cohabit, the Payment of the* 300 *l. ſhould ceaſe and avers, that they did cohabit for the Time the ſaid Arrear became due and pleads, this in Bar of the firſt Agreement.* There are expreſs Words that the Payment ſhall ceaſe during the Cohabitation; and there had been no great Harm to conſtrue this as a Releaſe of the Arrearges during the Cohabitation; But yet it being a Sum in Groſs, and the Covenant Temporary and not Perpetual, they held it no good Bar. 12 Mod. 552. cites 2 Vent. 217. Gawden v Draper.

12 Mod. S. C. and Judgment for the Plaintiff.

39. Where *Proviſo* goes *by way of Deaſeaſance* of a Covenant, it muſt be pleaded on the other Side, but it is otherwiſe where it goes *by way of Explanation or Reſtriction* of the Covenant; Per Holt Ch. J. and Judgment accordingly. 2. Salk. 574. pl. 2. Hill. 10 W. 3. B. R. Clayton v. Kinaſton.

40. If A. covenants with B. *to convey* to him *all his Right and Title* to the Manor of D. to which A. has no Right, it is not a good Plea in an Action of Covenant, that *He had no Right* &c But he muſt make ſuch a Conveyance as would in Truth paſs all his Title in Caſe he had any; And he is *eſtopped* by his Covenant to ſay he had no Title. Per Holt. 12. Mod. 399. Paſch. 12 W. 3. Anon.

41 In *Debt on Bond for Performance* of Covenants if the *Defendant pleads an ill Bar*, and the Plaintiff *replies and aſſigns a Breach which of his own ſhewing appears to be no Breach*, the Defendant ſhall have Judgment; Arg. 2. Ld. Raym. Rep. 1080, 1081. Mich. 3 Ann.

(O. a) Plea in Excuſe.

1. IN Covenant the Defendant *covenanted to give Security*; the Defendant *pleaded that he offered Security*, and reſolved that it was not good. Poph. 206. Arg. cites Mich. 2 Car. B. R. Roſſe v. Harvey.

2 Lev. 26. S. C. Hale and Rainsford held, that *this Act of Parliament makes not any new Title, but only removes an Obſtruction of the old*

2. A *private Act of Parliament* which makes the Conveyances of A. void, is no Excuſe of Breach of Covenant entered into by B. to C. for quiet Enjoyment by C. of Lands conveyed by B. to C. being Part of the Lands before conveyed by A. to B. and the Conveyance whereof is made void by the private Act of Parliament. Vent. 175. Mich. 23 Car. 2. B. R. in Caſe of Lucy v. Levington.

; and ſaid, that doubtleſs A. was named in the Covenant for this Purpoſe, in Caſe a Fine levied by one claiming under A. and unduly obtained from her ſhould be avoided; but Twiſden being of a contrary Opinion, Error was immediately brought, but what became of it the Reporter ſays he knows not. —— 2 Keb. 831. pl. 54. S. C. the Action being brought by the Executors, Judgment was given for them Niſi, this Statute being in Nature of a Judgment, and not of a Legiſlation.

3. In pleading an Excuſe for Non-performance the Party *muſt ſhew all done* by him that he was obliged to do; Per Holt. Ch. J. Show. 335. Mich. 3 W. & M. Wynne v. Fellowes.

(P. a) Pleadings. Performance.

1. A Man cannot plead *generally* Quod Performavit omnes et ſingulas Conventiones in Indentura prædict'. ſpecificat' ex Parte ſua Perimplendas, but *ſhall ſhew certainly in every Point how* he has perform'd; and where in Covenant the Defendant ſays that the Covenants are that he ſhall pay 10 l. by ſuch a Day, and infeoff him by the ſame Day, quas quidem Conventiones idem Def' bene perimplevit, this is no good Plea; For he ſhall ſhew how he has perform'd it certainly. Br. Covenant, pl. 35. cites 31 & 33 H. 8. Br. Conditions, pl. 198. cites 33 H. 8. S. C.

2. Debt upon Bond for Non-performance of *Covenants in a Leaſe*, one of which was, *that the Defendant and his Aſſigns ſhould diſcharge the Plaintiff of all Charges ordinary and extraordinary* &c. The Defendant pleaded, *that he was poſſeſſed* &c. *till ſuch a ſuch a Day, during which Time he paid the Rent, which was all the Charge ordinary or extraordinary, to that Day, and then he aſſign'd the Premiſſes to P.* And upon a Demurrer this was held an ill Plea, becauſe the Covenant being in the Copulative, that he and his Aſſigns ſhould diſcharge the Plaintiff, it *ought to have been pleaded Conjunctim*, viz. *that he and his Aſſigns did diſcharge* him. D. 26. b. pl. 172. and 27. b. pl. 177. Hill. 28 H. 8. Abbot of Weſtminſter v. Leman.

3. A. bound himſelf in a Recognizance to B. to *permit B. and all his Tenants in D. to have Common of Paſture for their Cattle in the Fields of D. when they ſhould lay Fallow, and* A. *further covenanted not to do, ſuffer, or cauſe to be done, any Act or Thing to alter the Courſes of the Fields in D. otherwiſe than now they are.* In a Scire Facias brought in Chancery upon this Recognizance &c. A. *pleaded as to the firſt Covenant, that he had permitted the ſaid B. and all the Tenants of D. to have Common* &c. And to the other Covenant he pleaded in Bar Generally, that he had not alter'd the Courſe &c. On Demurrer, becauſe the Pleading was General, the Opinion of divers Juſtices was that the Plea was good; But Harper totis Viribus e contra; but it was ordered againſt him. Dy. 279. pl. 6. Mich. 10 & 11 Eliz.

4. Articles or Covenants which are in the * *Disjunctive* ought always to be pleaded Specially to be perform'd, but ſuch as are in the *Copulative, and* in the † *Affirmative* may be pleaded to be perform'd Generally; Arg. Sav. 120. Trin. 29 Eliz. in pl. 189.

* Co. Litt. 303. b. S. P. and he muſt ſhew which of them he has performed.

† Co. Litt. 303. b. S. P.

5. Where any of the Covenants are in the *Disjunctive, ſo that it is in the Election of the Covenantor to do the one or the other*, there it ought to be *ſpecially pleaded*, and the Performance of it; For otherwiſe the Court cannot know what Part hath been performed. Le. 311. pl. 430. Paſch. 33 Eliz. C. B. Oglethorpe v. Hide.

Cro. E. 232. pl. 3. S. C. & S. P. held accordingly, but the Caſe being in Debt upon Bond to perform Covenants, whereof *ſome are in the Negative, and ſome in the Affirmative*, and the Defendant pleaded Performance generally, it was held to be only Matter of Form, and aided by the Stat. 27 Eliz. unleſs ſhewn for Cauſe of Demurrer, that ſome are in the Negative, and ſome in the Affirmative; For the Court ſhall judge according to the Truth of the Matter. ——— Cro. J. 559 pl. 7 Hill. 17 Jac. B. R. Lea v. Luthel, S. P. adjudged accordingly. ——— Palm. 70. Ley v. Luttrel, S. C. & S. P agreed by all. —— Co. Litt 303. b. S. P. accordingly; For a Negative cannot be performed. ——— S. P. per Cur 8 Rep. 133. b but if the Plaintiff replies and aſſigns an ill Breach, and the Defendant demurs, he ſhall have Judgment, becauſe upon the whole Record it does not appear that the Plaintiff had any Cauſe of Action. ——— Sty. 163. Mich. 1649. B. R. Fines v. Dell, it was held on Demurrer, that *where ſome* of the Covenants *were in the Affirmative, and others in the Negative*, a general Pleading of Performance to all is not ſufficient; for as to the Covenants in the Affirmative, he

he ought to plead a ſpecial Performance, and ſhew how he has performed them, and Judgment Niſi. —— Gilb. Equ. Rep. 253. cites S. C. of Oglethorpe v. Hyde, and 8 Rep. 132. Paſch. 8 Jac. Turner's Caſe, alias, Turner v. Lawrence, and ſays, that a Negative cannot be ſaid to be performed in a proper literal Senſe, (though the not doing may improperly be called a Performance) and therefore on a ſpecial Demurrer the Defendant's Plea would be bad; aliter on a general Demurrer; Where ſome of the Covenants are in the Disjunctive, there the Defendant cannot plead Performance generally, becauſe both the Alternatives are not to be performed, and by Pleading Performance generally he does not ſhew in certain which is performed by him, and therefore this is bad on a General Demurrer, which ſhews the want of that Certainty; but where the Plaintiff does not demur for want of ſuch Certainty, it ſhall be intended that the Defendant performed one of them, and therefore good enough; but in both theſe Caſes, where the Covenants are in the Negative, or the Disjunctive, and the Defendant pleads Performance generally, and the Plaintiff replies and aſſigns a Breach which is ill aſſigned, and the Defendant demurs, the Plaintiff ſhall not take Advantage of this ill Pleading of the Defendant's, becauſe by his Replication he admits the Performance of all the other Covenants, but that only where he undertakes to aſſign the Breach.

6. When there are in an Indenture Covenants *in the Negative for not doing, and in the Affirmative for doing*, the Defendant ought to plead ſpecially to the Negatives that he has not broken them, and to the Covenants in the Affirmative Generally, that he has performed them all. Mo. 856. pl. 1175. Mich. 11 Jac. C. B. Reſolv'd per tot. Cur. Norton v. Syms.

7. When the *Covenants Negative* are *againſt Law, and the Affirmative lawful*, there he may plead Performance Generally, and the Court is to take Notice that the Covenants in the Negative were void and againſt Law. Mo. 856. pl. 1175. Mich. 11 Jac. C. B. Norton v. Sims.

S. P. Holt's Rep. 207. Arg. in Caſe of Anneſley v. Cutter.

8. When all the Covenants are in the *Affirmative and Matter of Fact*, the pleading Performance of all the Covenants, without ſhewing how, is good; Agreed by all. Palm. 70. Mich. 17 Jac. B. R. in Caſe of Ley v. Luttrell.

Keb 334. pl. 5. Lathwell v. Fiſher, S. C. adjornatur. —— Ibid. 372. pl. 70. Lathwell v. Palmer, S. C. the Court held the Plea ill, as if they had been ſeveral Covenants, but the Court adviſed Amendments by Agreement.

9. Covenant *to go in ſuch a Ship out of the River Thames to C. in Spain, and that decederet, procederet & non deviaret.* The Defendant *pleaded Performance generally.* The Court held the Plea ill, and took a *Difference between a Negative Covenant which is only in Affirmance of an Affirmative Covenant precedent, and a Negative Covenant, which is additional to the Affirmative Covenant*, as here; For in the firſt Caſe Performance generally is a good Plea, but not in the laſt; but he ought to plead ſpecially; and in the principal Caſe the Defendant ought to have departed and proceeded, and might have gone to Africa or the Weſt-Indies if he had not been reſtrained by the Negative Covenant, viz. Quod non deviaret, and ſo it is clearly conditional. Sid. 87. pl. 1. Mich. 14 Car. 2. B. R. Laughwell v. Palmer.

Sid. 328. pl. 9 Gamsford v. Griffith, S. C the Court upon ſeveral Arguments inclin'd, [ſemble] that the laſt Words did not qualify or mitigate the firſt, but that they are diſtinct Clauſes, but yet they allowed the Rule, that reſtraining Clauſes at the Beginning, or at the End of a Sentenee, ſhall govern the whole; but that here the laſt Words, (That he ſhall enjoy it without the Let or Interruption) cannot, without Impropriety of Speech, be applied to the firſt Clauſe of (Indefeaſible Leaſe.) —— 2 Keb. 201, 202. pl. 34. S. C. the Court agreed, that had the Words been to enjoy notwithſtanding any Act, that ſhould have gone to the whole;

10. In Aſſignment of a Leaſe it is covenanted, *that the Leaſe then was Bona, Certa, Perfecta, & Indefeaſibilis Dimiſſio in Lege Anglice Leaſe in Law &c. & ita ſtabit & remanebit querenti durante Reſiduo of the ſaid Term &c. and that the Plaintiff Quiete & pacifice haberet, teneret &c. durante toto Reſiduo Termini, without any Let &c. of the Defendant &c.* A *Stranger enters*, and a *Breaeh* is aſſign'd, *that at the Time of making the Aſſignment the Leaſe Non fuit Bona, Perfecta & Indefeaſibilis &c.* Et Judic' pro Quer'; for *the firſt Sentence is indefinite, and has no Connection with the latter Sentences.* Saund. 51. 61. Paſch. 19 Car. 2. Gainsford v. Griffith.

whole; ſed adjornatur. ——— Ibid 213 pl. 51 S. C. the Court agreed, that the latter Words could not qualify the former, they not being Senſe if joined together; and Judgment for the Defendant.

11. A Man cannot plead Performance of Covenants in an Indenture *without ſhewing the Indenture.* Sid. 425. pl. 8. Mich. 21 Car. 2. B. R. Tapſcot v. Woolridge.

If he does *not demand Oyer* of the Indenture it is a good *Cauſe of Demurrer.* Vent. 37. S. C. ——— Ruled, that on ſuch Plea he muſt ſhew the Indenture: Sid. 97. pl. 25. Mich. 14 Car. 2. B. R. Lewis v. Ball. ——— Keb. 415. pl. 124. Lewis v. Bull, S.C. & S.P. adjudged. ——— Carth. 5. Hill. 2 & 3 Jac. 2. in Caſe of Fortune v. Davis, S. P.

12. An *ill Plea* of Performance of *Affirmative* Covenants is not *aided by the Replication*, *as* the Plea of *Performance generally to Negative Covenants may be.* Show. 1. Paſch. 1 W. & M. Fitzpatrick v. Robinſon.

13. M. *bargained and ſold to B. the Plaintiff and his Heirs a Meſſuage* &c. *and alſo Ingreſs, Egreſs, and Regreſs at all Times for B his Heirs and Aſſigns*, from the Gatehouſe *to a Well* adjoining, *to draw Water for his and their neceſſary Occaſions.* Debt upon *Bond for Performance of Covenants, one* of which *was, that he was ſeiſed in Fee of the Premiſſes*, and another was *for quiet Enjoyment, and free from all Incumbrances*, and *another was for a farther Aſſurance &c.* The Defendant *pleaded Performance generally.* The Plaintiff *replied, that at the Time of Sealing &c. he was not ſeiſed in Fee Secundum Formam &c. Conventionis* &c. of the ſaid Well, prout &c. And upon Demurrer it was objected, that there was no Covenant in the Indenture that he was ſeiſed in Fee of the Well, and of this Opinion were all the Court, and conſequently, (though it was not expreſly ſaid by the Court) the other Covenant, that he was ſeiſed in Fee of the Meſſuage and Premiſſes, do not extend thereto, and therefore the Replication was not good. But Powell J. ſaid, that the *Plaintiff ought to have alleged, that the Plaintiff* [*Defendant*] *had not any Power to grant the ſaid Liberty to draw Water out of the ſaid Well.* But then an Exception was taken to the Plea, becauſe in the Indenture is a Covenant for quiet Enjoyment againſt all Incumbrances &c. and to ſuch Covenant the Defendant could not plead Performance generally, but he ought to have ſet forth, that the Houſe was free from Incumbrances at the Time of the Conveyance made, and not incumbred in any Manner, and that no farther Aſſurance has been required, or ſuch an Aſſurance, and no other, which he had executed. But per Cur. this Plea was held good in Subſtance, but Powell J. ſaid it was not the beſt way of Pleading, but that it had been better if pleaded as abovementioned. Lutw. 603. 608. Hill. 13 W. 3. Butterfield v. Marſhall.

14. Where the Covenants *are to do a Matter of Law, As to convey, diſcharge an Obligation, ratify, or to confirm* &c. there it muſt be *pleaded ſpecially*, becauſe it being a Matter of Law to be performed, it ought to be exhibited to the Court to ſee it be well performed, who are Judges of the Law, and not to a Jury who are Judges of the Fact only. Gilb. Equ. Rep. 253. in Caſe of Fitzpatrick v. Strong, cites 1 Le. 172. Dy. 229.

(Q. a) Pleadings as to Conditions for Performance of Covenants.

1. DEBT upon Obligation; the Defendant ſaid, that it is *indorſed* upon Condition, *that if the Defendant obſerved the Covenants* contained in certain Indentures, that then &c. and *ſaid, that in the Indenture is contained, that he ſhall do ſuch and ſuch a Thing, and that he has done them*, and the Plaintiff e contra, and found for the Plaintiff; and the Defendant pleaded in arreſt of Judgment, that the *Defendant has not alleged that thoſe are all the Covenants contained in the Indenture*, and yet good by all the Juſtices; for *where the Plea is referred to a Certainty, as here, to the Indenture, it ſhall be intended that this is all which is in the Indenture*, and after the Plaintiff recovered; Quod Nota. Br. Conditions, pl. 144. cites 6 E. 4. 1.

2. Debt upon Obligation with Condition *to perform all Covenants contained* in certain Indentures, the Defendant *cannot plead the Condition and rehearſe the Covenants, and ſay generally*, that *he has performed* all the Covenants, but *ſhall ſhew how*; Per tot. Cur. Br. Conditions, pl. 2. cites 26 H. 8. 5. and 20 H. 8. and 35 H. 8. accordingly; Quod Nota.

3. As touching Conditions for the Performance of Covenants in Indentures, the Defendant ought to *plead the Indenture, and* the ſpecial Manner particularly, *how he hath performed every Covenant*. Heath's Max. 46. cites 27 H. 8. 1. and 33 H. 8. Brook Covenant, 35. and D. 279. 11 & 12 Eliz. and D. 26. 28 H. 8. But ſays, that as it ſeems there one need not aver, *Quæ ſunt omnia & ſingula Conventiones* &c. becauſe referred to a Matter in Writing. The like of a Record; and for that reaſon it ſeems of Neceſſity that he need not to plead *prout in eadem Indentura* &c. Quære tamen. But if not referred to Writing or Record then it ſhall be otherwiſe, As if I am bound to infeoff you of all my Lands in *Dale*, I muſt ſhew the Number of Acres, and plead alſo *Quæ ſunt omnia* &c. But ſays, that at this Day the Courſe of the Practice is, (notwithſtanding the Covenants are reduced into Writing after they are recited in the Plea) to inſert this Clauſe, *Prout per eandem Indenturam plenius apparet.* Heath's Max. 46.

4. Debt on Bond againſt H. P. for Performance of Covenants, by which the Plaintiff covenanted, that E. the Defendant's Brother *ſhould enjoy ſuch Lands till Michaelmas following, rendring Rent*, and H. the *Defendant covenanted, that his Brother ſhould quietly ſurrender* the Lands to the Plaintiff, *and that the Defendant would permit the Plaintiff to have in the mean Time free Ingreſs, Egreſs* &c. *to ſuch Lands as by the Cuſtom of the Country ſhould lie freſh.* The Defendant *pleaded, that he did permit the Plaintiff to have free Egreſs and Regreſs &c. into ſuch Lands* as by the Cuſtom of the Country did then lie freſh. Exception was taken to this Plea, for that the *Defendant did not ſhew which Lands did lie freſh according to the Cuſtom of the ſaid Country*; but adjudged, that where an Act is to be done according to a Covenant, he who pleads the Performance of it ought to plead it ſpecially, but in the principal Caſe no Act was to be done but a Permittance as aboveſaid, and it is in the Negative, not a Diſturbance, in which Caſe Permiſit is a good Plea, and then it ſhall come on the Plaintiff's Part to ſhew into what Lands the Defendant non permiſit him to have free Ingreſs and Regreſs &c. and cited this Difference to be ſo agreed by the whole Court

Court in 17 E. 4 26. And ſo was the Opinion of the whole Court in the principal Caſe. Le. 136. pl. 186. Mich. 30 Eliz. C. B. Littleton v. Pernes.

5. Debt upon Obligation *to perform Covenants* in an Indenture, which were, 1ſt. That he ſhould marry M. the Plaintiff's Daughter before ſuch a Day. 2dly, *That J. S.* [*a Stranger*] and [*E.*] *his Wife ſhould levy a Fine* of ſuch Lands to the Defendant and the ſaid M. and to the Heirs of their Bodies. 3dly, That the Inheritance of the ſaid Lands ſhould remain in the ſaid J. S. or himſelf till the Fine levied. 4thly, Whereas he had made a Leaſe for Years of Part of Marſh-wood to the ſaid M. the Plaintiff's Daughter, *that he had not made any former Grant, nor ſhould make any thereof without the Plaintiff's Aſſent.* To the laſt Covenant in the Negative the Defendant *pleaded, that he had not made any* former Grant of the Leaſe, nor any Grant after the Obligation *without the Plaintiff's Aſſent, and as to all the other Covenants that he had performed them.* Reſolved, becauſe the Covenant to levy the Fine is an *Act to be done by a Stranger*, and to be performed on Record, in both which Caſes he ought to plead and ſhew how he had performed it; for * *Acts of Record muſt be ſhewn ſpecially*; 2dly, The Covenant being in the † *Diſjunctive*, he ought to have ſhewed ſpecially which of them, and not pleaded Performance generally. And 3dly, He pleads he *did not grant without the Plaintiff's Conſent*, which *is a* ‡ *Negative Pregnant*, and ſo not good, and Judgment for the Plaintiff. Cro. J. 559. pl. 7. Hill. 17 Jac. in B. R. Lea v. Luthell.

2 Roll Rep. 159. Ley v. Luttrell, S. C. ſays, that Judgment was given againſt the Defendant upon the Point of its being a Matter of Record, and that the better Opinion alſo was, that the Plea was not good, becauſe that J. S. and his Wife were Strangers to the Act, viz. to the levying of the Fine, and alſo to the Indenture of Covenants, but ſays the Court were not agreed as to this Reaſon —— Palm. 70. S. C. adjudged upon the Point as mentioned in 2 Roll Rep. ſupra. But Mountague ſaid, he ſaw no Difference in Reaſon, when the Act is to be done by a Stranger, and when by the Party; and if a Condition be, that the Obligee ſhould do an Act to a Stranger, there he ought to ſhew how he has performed it. Doderidge ſaid, that the Reaſon is, becauſe the Obligee is a Stranger to him who ought to do the Act, and therefore the Obligor ought to ſhew How this Act was performed by the Stranger; and Haughton ſaid, that the Reaſon is, becauſe he cannot ſay that he performed all Covenants when the Act is not done by him. —— But Kelw 95. b. pl. 3. Mich. 22 H. 7. cites Mich. 1 H. 7. where it was agreed, that if the Condition be, that J. S. a Stranger ſhall infeoff the Obligee, the pleading a General Performance is ſufficient.

* But Co. Litt. 303. b. ſays, that if any Covenants in the Condition are to be done of Record, the Defendant muſt ſhew the Performance ſpecially, and cannot involve it in general Pleading.

† Co. Litt. 303. b. S. P. accordingly.

‡ Co. Litt. 303. b. S. P. accordingly.

6. In Debt upon Bond for Performance of Covenants, which was, that the Defendant (being a *Sheriff's Officer*) *ſhould not let go at large any Perſon arreſted without the Licence or Warrant of the Sheriff*; and the Breach aſſigned was, that he let at large at Weſtminſter, without any Warrant &c. ſuch a Perſon who was arreſted, but did *not ſet forth the Place, or the Time when the Perſon was arreſted.* All the Court held the Declaration good, becauſe the Eſcape, or the Letting at large, was the material Part of the Covenant, and the Modus or Manner of the Arreſt is not in Queſtion, nor any Part of the Covenant, but the letting him go at large is the Subſtance of the Covenant, and that is alleged to be at Weſtminſter. Sid. 30. pl. 6. Hill. 12 Car. 2. C. B. Jenkins v. Hancock.

7. There is a Diverſity between *Covenants* in Indenture *conſiſting of ſeveral Parts in the Affirmative*, and a *Condition of a Bond* conſiſting of ſeveral Parts; for in the laſt Caſe he muſt ſhew in Pleading that he has performed the ſeveral Things comprized in the Condition particularly; but in the Caſe of Covenants Performance generally is a good Plea. Sid. 215. in pl. 18. cites Mich. 16 Car. 2. **Brooks v. Down**, where in Debt on Bond conditioned to deliver a Brief at every Church &c. before ſuch a Time &c. the Defendant pleaded, that he delivered at the Church &c. but did not ſay at what Time &c. and upon Demurrer it was adjudged for the Plaintiff, that the Bar was inſufficient.

The Plaintiff demurred, becauſe he ought to have pleaded expreſsly according to the very Words of the Condition, and not generally, as he did by this Plea; and of ſuch Opinion the Court ſeemed to be; ſed adjornatur. Lev 145. Mich.

Mich 16 Car. 2. B. R. Brooks v. Dean, S. C. —— So where the Condition further was to deliver the Money collected on ſuch Briefs before ſuch a Time, and becauſe he did not ſet forth particularly what Sums he received, but only pleaded Performance generally, it was adjudged ill. Sid. 215. Trin. 16 Car. 2. B. R. Woodcock v. Cole.

8. Action of *Debt upon a Bond*, the Condition *was to ſeal an Indenture of Demiſe, and to perform all Covenants contained therein.* The Defendant *pleads, that he ſealed the Demiſe, and performed all the Covenants* therein. The Plaintiff demurs, becauſe he does *not ſet forth what the Covenants are.* Judgment pro Quer' Niſi. Freem. Rep. 20. pl. 23. Mich. 1671. in B. R. Brian v. Munteth.

9. Debt upon Bond for Performance of Articles, which were, *that Defendant ſhould educate, keep, maintain, and provide for C. the Defendant's Son, in one of the Univerſities in this Kingdom, until he had paſſed all his Degrees, and was a Maſter of Arts* in one of the ſaid Univerſities; and when he became Maſter of Arts, as aforeſaid, the Plaintiff was to pay ſo much to the Defendant for his ſaid Son's Uſe. Defendant in his Plea anſwered to every thing, but only that he did not *ſhew who maintained him from the Time he became Bachelor of Arts, until he became Maſter of Arts*, and for that Reaſon Judgment was for the Plaintiff. Holt's Rep. 206. pl. 12. Hill. 5 Ann. Anneſley v. Cutter.

(R. a) Iſſue. Trial. Judgment and Recovery of what.

If the Term be not expired, he ſhall recover the Term again if he has put him againſt the Leſſor.

1. IF the *Leſſor ouſts the Leſſee* he ſhall have Covenant, and ſhall *recover his Term and Damages*, and *if the Term be expired he ſhall recover all in Damages.* Br. Covenant, pl. 33. cites 26 E 3. and Fitzh. Covenant, 3.

out; But *if a Stranger puts him out by Eigne Title*, then he ſhall *recover all in Damages* F. N. B. 145. (M)

2. If *Tenant in Tail makes a Leaſe for Years by Deed, and dies ſeiſed of Aſſets in Fee-ſimple*, yet the *Iſſue in Tail may enter*, and therefore the *Leſſee ſhall* have a Writ of Covenant againſt him to *recover Damages, but not* to recover *the Term*; for his Entry was lawful cites 38 E. 3. 24. Note, the Writ of Covenant for the Leſſee who is ouſted by a Stranger by Title is, Quod teneat Convent' &c. De Damnis & de Perditis. F. N. B. 145. (M) in the new Notes there (c).

Br. Conditions, pl. 228. cites S. C.

3. Covenant *by the Leſſee* for Years againſt the Leſſor *for ouſting him within the Term*, and the other *juſtified by Clauſe of Re-entry for Rent arrear*; and the *Plaintiff ſaid, that there was a Parlance* between him and the Defendant, *that the Defendant ſhall be at Table with the Plaintiff and recoup the Rent according to the Rate*, by which for ſuch Time he recoup'd ſo much, and the reſt was 4 s. which he tendered, and the Defendant refuſed, and yet he is ready, and tender the Money to the Court, Judgment; *and prayed Reſtitution of the Term* and Damages; and ſo ſee, that by Action of Covenant he ſhall recover his Term; and the Defendant ſaid, that ſuch a Day the Plaintiff ſhewed to him that Victuals were dear, and therefore deſired him &c. by which he re-entred for the Rent; and the other ſaid, that he departed of his own free Will, abſque hoc that he deſired him; and after he waiv'd this, and ſaid that he was ready at the Day to have paid &c. if any had come to demand it &c. Brooke makes a *Quære, if* ſuch Parlance, as above,

bove, *without Deed*, be ſufficient to diſcharge Covenant which is by Deed? for it is not ſufficient; Per Parle. Br. Covenant, pl. 13. cites 47 E. 3. 24.

4. In Covenant the Plaintiff counted upon ſeveral Covenants, and well, and the Defendant anſwered to all; for he ſhall recover *Damages ſeverally for every Covenant.* Br. Covenant, pl. 34. cites Fitzh. Iſſue, 86. and M. 10 H. 6. 23. accordingly.

5. In Action of Covenant a Man may take Iſſue *upon every Covenant* to have the more in Damages; *Contra in Debt upon an Obligation for Non-performance of ſeveral Covenants*, for there the Breach of any Covenant is a Forfeiture of the whole Obligation. Br. Covenant, pl. 47. cites 10 H. 6. 23.

(S. a) Qualified or relieved in Equity.

1. THE Bill is to be relieved againſt the Forfeiture of a Leaſe, in which there is a Covenant, *that if the Leſſees ſhould let the Premiſſes for any longer than three Years, except to the Wife or Children of the ſaid Leſſee, without Licence of the Leſſor or his Aſſigns firſt had, then the ſaid Leaſe to be void*; That the Defendants have entred upon the Premiſſes, on Pretence that the Executors of the Leſſor did alien the ſame to the Plaintiff without Licence, and have ouſted the Plaintiff who purchaſed the ſame; This Court on reading Precedents, foraſmuch as the ſaid *Executors ſold the Leaſe for Payment of Debts to which the ſame was liable*, and if ſhe had not been Executrix there had been no Forfeiture. This Court decreed the Plaintiff to be relieved againſt the ſaid Forfeiture. Chan. Rep. 170. 1656. Cox v. Brown.

2. Covenant to perform Articles for the *ſettling of Lands of which the Covenantor had no Poſſeſſion*, but only a *Poſſibility of Deſcent*, after a Deſcent decreed to be ſettled. Chan. Rep. 158. 21 Car. 1. Wiſeman v. Roper.

3. *Breach of Covenant*, though proved to be *much to the Advantage of the Covenantee*, yet no Relief in Chancery, though it was urged that the Penalty was exceſſive, beyond that of a Bond of double the Value. 2 Chan. Caſes 198. Trin. 22 Car. 2. Blake v. the Eaſt India Company. Fin. Rep. 117. S. C. and no Relief.

4. A. ſells a Parſonage and *covenants againſt his own Acts*, but there was likewiſe a Covenant that he *had good and lawful Power* to grant and convey the Premiſſes to the ſaid Vendee, and his Heirs, which was contrary to the true Intent of the Parties; Decreed that the general Words ought not to oblige the Plaintiff, being *contradicted by all the Subſequent Covenants*, and the Plaintiff ſelling only ſuch an Eſtate as he had. Fin. R. 90. Hill. 25 Car. 2. Feilder v. Studeley.

5. A. *Aſſignee by way of a Mortgage* of a Leaſe for Years of a Houſe with Covenant to repair. A. was *never in Poſſeſſion*. Per Cur. it was A's. folly to take Aſſignment of the whole Term and ſo ſubject himſelf to the Covenants in the Original Leaſe; yet as he is only a Mortgagee and never was in Poſſeſſion; the Court diſmiſs'd the Bill, and left the Plaintiff to recover at Law, as well as he can; per Commiſſioners. Mich. 1692. 2 Vern. R. 275. Sparks v. Smith.

But where a Ground Rent was reſerv'd on a Leaſe and the Leaſe was aſſign'd over by way of Mortgage to A. for 100 l. A. never enter'd and loſt the 100 l. Mortgage Money, but was ſued by the Leſſor for the Ground Rent. A. brought a Bill for Releif but it was diſmiſs'd, the Mortgage being by way of Aſſignment, and not by way of Underleaſe. 2 Vern. 374 pl. 336. Pilkington v. Shaller.

The Court obſerved that the Covenant was likewiſe *that the Premiſſes ſhould be held and enjoy'd Purſuant to the uſes limited*, which latter Covenant being Executory, was the ſtronger as it might afford ſome Pretence for a *Specifick Execution thereof*. But upon the whole his Lordſhip thought the *later Covenant was* to be conſtru'd as Relative to and *dependent upon the former and to be Reſtrain'd by that*, and to have meant no more than that the Father ſhould not by ſuffering a Recovery, prevent the Premiſſes from being enjoy'd according to the ſaid Limitations. Wms. Rep 104. 108. S. C.

6. Tenant in Tail by Deed covenants in the ſame Deed, *not to Dock the Entail* or *ſuffer a common Recovery*, he has only one Child, a Daughter, to whom he gave a good Portion on Marriage, he ſuffers a common Recovery and by Will deviſed the Eſtate to his Daughter for Life, and to her firſt &c. Sons in Tail, and if ſhe ſurviv'd her Husband ſhe ſhould have it in Fee to her and her Heirs, on Bill by the Daughter and her Husband, for the Specifick Execution of the Covenant it was inſiſted for the Plaintiff that the Agreement was Executory, and like a *Covenant, that a Man would not execute a Power*, as in the Lord Peterburgh's Caſe, the 15 Leaſes ſet aſide per Cowper C. this Caſe differs for there was an *Agreement (Subſequent* to the raiſing of the Power) to extinguiſh it but here all is *in the ſame Deed*, ſo you knew his Power and therefore accepted a Covenant, by which to have Damages. 2 Vern. 635. Hill. 1708. Collins v. Plummer.

7. *But* where *Tenenant for Life with Power to make Leaſes, covenanted in a ſubſequent Deed not to make Leaſes*, yet afterwards executed his Power, the Court of Chancery ſet aſide the Leaſes; But the reaſon was as Lord Chancellor obſerved in the Caſe of Collins v. Plummer, that this was an Agreement ſubſequent to the raiſing of the Power, to extinguiſh it whereas in Collins and Plummers Caſe, the Covenant was in the Deed. 2 Vern. 635. and Wms. Rep. 105. 107. cites it as Lord Peterborough's Caſe.

8. A. the *Father of M. (a Feme ſole) mortgaged Land for raiſing part of a Portion on her Marriage with J. S.* and afterwards died, leaving only M. his Heir. M. afterwards join'd with B. in a Fine and by Deed declar'd the Uſes to her Husband and ſelf, and the Heirs Male of the Body of the Husband. The Mortgagee calling in his Money, *J. S. join'd with M. in an Aſſignment of the Mortgage and covenanted that he and Wife or one of them would pay the Money. J. S. died* leaving W. S. his Son by M. and after M. inter-married with W. R. and died. Lord C. Cowper decreed that the *Perſonal Eſtate of J. S. ſhall not go in Eaſe of the Mortgaged Premiſſes*, the Debt being originally A's and continuing ſo to be, the *Covenant, upon transferring* the Mortgage, *was an additional Security for Satisfaction only of the Lender*, and not intended to alter the Nature of the Debt. Wms's. Rep. 347. Paſch. 1717. Bagot v. Oughton.

9. *So that* it ſeems as the Reporter obſerves, *if a Feme ſole mortgages and receives the Money, and an after Husband joins in aſſigning the Mortgage and covenanting to pay the Money* and dies; *his Perſonal Eſtate ſhall not be liable* to the Payment; Secus if the Husband had receiv'd the Money. Ibid. 348.

10. *Breach* of Covenants *is Triable at Law*, for Equity will not ſettle Damages. MS. Tab. March 17th 1719. Stafford v. Mayor of London.

For more of Covenant in general, See **Action** (M. c. 3.) **Condition. Debt. Eſtate. Grants** (H. 7.) and other proper Titles.

* Covin.

Fol. 549.

(A) [Discountenanc'd in Law.]

* Covin *is a* secret Assent determined in the heart of 2 or more Men to the prejudice of another, per Montague Ch. J. Pl. C. 54. b. in Case of Wimbish v. Talboys.——9 Rep. 109. b in Merial Tresham's Case.——Arg. and 110. a. S. C. cited per Cur.——Co. Litt. 357. a. b.——S. C, cited Sid. 21. in pl. 3 ——But *Fraud* may be by one alone. 9 Rep 110. b. per Curiam.

1. IF a Man that has a Right of Action to **certain** Lands **by Covin,** causes another to oust the Tenant **of the Land,** to the Intent to recover it from him, and he recovers accordingly **against him by Action tried, yet he shall not be remitted to his ancient Right, but is in of the Estate of him who was the Duster.** * 41 Ass. 28. **Curia. adjudged, and Assise lies against him.** † 44 Ass. 29.

† Br. Remitter pl. 46. cites S. C.——Br. Falsifier de Recovery, pl. 40. cites S. C.—— See tit. Remitter (C) pl. 1. S. C. and the Notes there ——S. C cited 3 Rep 78. a.

‡ Br Falsifier de Recovery pl. 43. cites S. C.——S C. cited 8 Rep. 133. a. —— S. P. by Clench and Gawdy. Poph. 64. and Ibid. 100. S. P. by Popham and Gawdy in Case of Goodale v. Wyat.

2. **If a Man** disseises **me** of Land, to which a Woman hath Title of Dower, of Covin, **and with Consent** of the Woman, to the Intent to endow her, **and he endows her in the Countrey accordingly, yet this is of no Effect against me, but I may oust him because of the Covin. Dubitatur, 44. Ass. 29.** Br. Falsifier de Recory pl. 43. cites S. C.—— Br. Collusion pl. 20. cites 15 E. 4.

S. P. by Littleton, and Cur. cited.——S C. cited 8 Rep. 132. b.——S. C. cited by Mountague Ch. J. Pl. C. 54. b.——Co. Litt. 35 a. S. P.——Co. Litt. 357. b. S P. and says, that so it is in all Cases where a Man has a rightful and just Cause of Action, yet if he of Covin and consent does raise up a Tenant by wrong, against whom he may recover, the Covin suffocates the Right, so as the Recovery, though upon good Title, shall not bind or restore the Demandant to his Right. But if a Disseisor, Abator or Intruder do endow a Woman that has lawful Title of Dower, this is good and shall bind him that has Right, if there was no such Covin or Consent before the Disseisin, Abatement or Intrusion.——Br. Dower. pl. 59. cites 12 Ass 20. S. P.——Br. Assise pl. 181. cites S. C. & S. P. accordingly.——Br. Damages pl. 96. cites S.C. & S. P. ——Fitzh Dower pl 42. cites Hill 24 E. 3. 46. S. P.——Perk. S. 394, 395, 396.——3 Rep. 78. a. S P. per Cur. in Fermor's Case, and cites several Year Books, and D. 295. For though her Right be lawful and she has pursued her Recovery by Judgment in the King's Court, yet the said Covin makes all illegal and tortious though Recoveries, and especially where they are upon good Title are much favour'd in Law.

3. **The** same **Law,** though the Endowment was upon a Recovery against him in a Writ of Dower, **because of the Covin.** 44 Ass. 29. Br. Falsifier de Recovery. pl. 43. cites S. C. —— Br. Dower pl. 15. cites 44 E. 3. 46. S. P. and Ibid. pl. 59. cites 12 Ass. 20. S. P. admitted. —— Br. Assise pl. 181. cites S. C. and S. P. admitted.——Br. Damages, pl. 96. cites S. C. and S. P. admitted.——S. C. cited 8 Rep. 33. a.

4. A *Resignation* by an Abbot by Covin shall not abate the Writ. 3 Rep. 78. b. cites 4 E. 2. Cui in Vita. 22.

5. An *Estate is made to the King and by Letters Patents granted over,* and all this by Covin between him, that granted to the King and the Patentee, *to make an Evasion out of the Statute of Mortmain,* shall not bind but be repealed. 3 Rep. 78. b. cites 17 E. 3. 59. and 21. E. 3. 46.

6. The *Buying Goods in a Market Overt,* by Covin does *not alter the Property.* Br. Collusion &c. pl, 4. cites 33 H. 6. 5. Br. Trespass pl. 26. cites S. C. shewing any Cur. Cro. E. 86. pl. 6. Hill. 30 Eliz. B. R. in Case of Wikes v Morefoots. —— 2 Inst 713. S. P.

——Pl C. 46. cites S. C and that the Plea of Covin was admitted good without Thing of the Covin specially ——S. P. per Cur. 3 Rep. 78. b ——S. P. admitted per

S. C. cited Sid. 21. per Cur.

7. A *Woman and her Husband as Adminiſtrators of the firſt Husband, recovered a Debt* and while that Suit was depending, the *Son of the Inteſtate by Covin between him and the Defendant, procured new Letters of Adminiſtration to him and his Mother jointly, and after Judgment releaſed to the Debtor*; The Husband and Wife ſued Execution, the Debtor brought an Audita Querela, hanging which the 2d Adminiſtration was repealed per Sentence, and the Covin and the repeal pleaded in Bar, and upon Demurrer Judgment was againſt the Plaintiff in the Audita Quela. D. 339. pl. 46. Hill. 17. Eliz. Anon.

8. Covin is always to the *prejudice of a third Perſon*; per Wray. Le. 180. pl. 255. Trin. 31 Eliz. B. R. in Caſe of Fiſh and Brown v. Sadler.

9. The Common Law ſo abhors Fraud and Covin, that *all Acts* as well *judicial as others*, and which of themſelves are juſt and lawful, yet *being mixt with Fraud* and Deceit, *ſhall in Judgment of Law be tortious* and not lawful; Quod alias bonum et juſtum eſt, ſi per vim vel Fraudem petatur, malum et injuſtum efficitur. 3 Rep. 78. a. Hill. 44. Eliz. in Fermor's Caſe.

10. A. *Diſſeiſor enfeofs A. with Warranty, and* the Diſſeiſor *afterwards with others procures B. to diſſeiſe A. and that C. who has an elder Right and cannot enter, ſhall bring a Scire Facias againſt B. to execute a Fine* levied to him; by which Means A. is to loſe his Warranty; for upon the Scire Facias no Voucher lies; All this is done accordingly, and Judgment is given for C. againſt B. *A. upon this Covin may well maintain a Writ of Conſpiracy* in the Nature of an Action *upon the Caſe againſt the Diſſeiſor and the other Conſpirators*, and the Judgment in the Scire Facias ſhall be avoided; And this Action upon the Caſe ſhall avoid it for the Vexation and Falſehood, and loſe of Warranty. Reſolved by the Council. Underſtand this regularly by all the Judges of England. *The Remedy for C. is, he may have a Scire Facias againſt A.* now the Terretenant; if the Fine was not executed and pending this Scire Facias, A. ſhall bring a Warrantia Chartæ againſt the Diſſeiſor, and ſo the Right of every one ſhall be ſaved. Jenk. 49. pl. 94.

11. *Tenant in Tail diſcontinues and dies*, his *Heir within Age*; a *Stranger by Covin diſſeiſes the Diſcontinuee*, and *enfeoffs the Infant within Age*; the Infant is not remitted, although he knew nothing of the Covin. By all the Judges of England. Jenk. 193.

3 Rep. 78. a. S. P. per all the Judges in England, except 2. Hill. 44. Eliz in Canc. in Fermor's Caſe.——Co. Litt. 35. a. S. P. For Covin in this Caſe ſhall ſuffocate the Right that appertained to her and ſo the wrongful Manner ſhall avoid the Matter that is lawful.——Co. Litt. 357. b. S. P.——5 Rep. 31. a. S. P.——6 Rep. 58. a. S. P. obiter.——8 Rep. 132. b. 133. a. Arg. cites 44 E. 3. 45. b.

12. *Tenant in Tail* who has a Wife *makes a Feoffment and dies*; the *Feoffee is diſſeiſed to the Intent that the Diſſeiſor ſhall endow the Wife*; This Dower is worth nothing becauſe of the Covin. Jenk. 193.

13. *Debt* is brought *by a Woman Adminiſtratrix*; She has Judgment; *before Execution this Adminiſtration is revoked by Covin, and committed to the ſaid Woman and her Son*; the *Son releaſes the Debt*; the *Woman ſues Execution*; the Debtor brings an Audita Querela; It does not lie becauſe of the Covin. Jenk. 285. pl. 17.

14. The Plaintiff, *a Woman, who had* 150*l. given her by her Brother, the Defendant, upon her Marriage, gives a Bond privately to her Brother to repay* the ſaid Money; The *Husband being Dead without Iſſue, the Defendant ſued the Bond at Law* upon the Plaintiff; whereupon *ſhe preferred her Bill here to be relieved* againſt it, being a Fraud by Reaſon it was done without the Privity of her Husband. It was urged for the Defendant, that it was good Reaſon for the Husband or any of his Iſſue to be

be relieved, in Caſe they had been concerned, but that there was no Reaſon that the Woman herſelf, who gave the Bond, ſhould be relieved. But ordered that the Bond ſhould be delivered up; for being once a Fraud no accident of Death or Courſe of Time ſhould alter the Caſe; and the *Plaintiff was relieved notwithſtanding it was her own Agreement, being done in Fraud of the Husband.* 2 Freem. Rep. 101. pl. 111. Mich. 1687. Gay v. Wendow.

(A. 2) What Perſon or Perſons may do it.

1. COvin cannot be but between two. 39 H. 6. 19. b. Br. Colluſion &c. pl. 23 cites S. C.—— S C. cited 9 Rep. 109. b.—— S. C. cited 6 Rep. 58. a.

2. Covin may *be upon good Title*; As where a Feme had for her Jointure Eſtate Tail with Warranty, and had been impleaded by Action upon good Title, and by Covin had *confeſs'd the Action*; it is within the 11 H. 7. 20. For though the Title of the Action is good, yet if ſhe had vouch'd and recover'd in Value this Recovery in Value would go in Benefit of the Iſſue in Tail which is now loſt by the Covin. Per Hales. J. Pl. C. 50. b. Mich. 4 E. 6. Wimbiſh v. Talboys. Ibid. 54 b. S. P. per Montague Ch. J cites 15 E. 4. 4. Br. Colluſion. 20. & M. 8. H. 4. 5. fo. 6.

(B) *What* Things may be *averred to be* upon Colluſion. *Records.*

1. IF a Recovery by a Stranger, pending the Writ, be pleaded in Abatement, **the Demandant cannot aver it to be by Covin between the Tenant and the Stranger.** 41 E. 3. 11. Fitzh. Brief pl. 533. cites S. C. —— In Dower the Tenant ſaid that he himſelf diſſeiſed J. N. who re entred pending the Writ, Judgment of the Writ; and a good Plea; The Demandant ſaid that J. N. entred by Covin to abate the Writ; and no Plea; For where this Entry is lawful, it cannot be by Covin. Br. Colluſion &c. pl. 20. cites 15 E. 4. 4.—— S. C. cited 8 Rep. 132. b. as held, becauſe the Entry is lawful and mix'd with no Tort.—— S. C. cited Pl. C. 43. b. 44. a. as held by the Opinion of the whole Court that the Demandant cannot have ſuch general Averment of Covin without Cauſe ſhewn.—— Ibid 48. a. S. C. cited accordingly; For as the Demandant had not denied the Title of J. N. ſuch Averment of Covin is repugnant to the Thing confeſs'd.

2. *Formedon* was brought by Covin of the Tenant againſt himſelf, becauſe he was *Feoffee upon Condition* and *had broken the Condition and would have the Land to be loſt againſt the Feoffor*, and this Matter was alleged by Feoffor who was a Stranger to the Action; for the Defendant confeſſed the Action, and thereupon Proclamation was made, if any one could ſay any Thing why the Demandant ſhou'd not have Judgment and Execution? Whereupon the Feoffor came in as above, and ſhew'd as above, and the Matter was examin'd and confeſs'd, and the *Tenant put to give Bail to attend his Puniſhment for the Diſceit.* Br. Colluſion &c. pl. 15. cites 7 H. 4. 19.

3. *In* an *Action Perſonal* Colluſion ſhall *not be inquired, nor in Avowry*, nor in Writ of *Entry at the Common Law*, per Frowike quod Kingſmill Conceſſit; and ſaid, that in *Quare Impedit*, the Colluſion ſhall be inquired, and ſo in *Aſſiſe* Br. Colluſion. pl 48. cites 10 H. 7. 3.

4. In

9 Rep 110. Treſham's Caſe.

4. In all Caſes where *Averment of* Covin or other Thing is given by Statute or Common Law, there a Man ſhall aver it *generally* where there can be no ſpecial Cauſe of it, but where there may be a *ſpecial Cauſe*, there the Averment muſt be ſpecial ; Per Mountague Ch. J. Pl. C. 55. Mich. 4 E. 6. Wimbiſh v. Talboys.

5. Covin ſhall *never* be intended or *preſumed* in Law unleſs it be expreſsly averred ; Reſolved. 10 Rep. 56. Trin. 11 Jac. in the Chancellor &c. of Oxford's Caſe.

(C) In what Caſe the *ordinary Courſe* ſhall be *changed by Covin.*

The Caſe was that a Man came out of London into C. B. by Privilege, by Suit againſt him in Bank,

1. * 39 H. 6. 50. A Man comes by Habeas Corpus out of London, and had no Cauſe to have the Priſon but by his Covin, it was ordered, that he ſhould be in Execution till he had paid the Debt recovered againſt him after the Writ brought, and that after he ſhould be remanded to anſwer the Plaints there. A Judgment ſhall be ſtay'd for Colluſion. † 7 H. 4. 19. b.

and it appear'd by Examination that he was *arreſted in London in the Vacation when he need not come about his Suit to Weſtminſter*; and therefore the Opinion of the Court was that he ſhould be remanded, and therefore the Plaintiff in C. B. pray'd that he might firſt anſwer to his Suit there when he was preſent, and the Count was in Debt of 20 l. and the Defendant as to 40 s confeſs'd the Action, and to the reſt pleaded another Plea, and Judgment was given of the Sum confeſs'd and 4 s. Damages. Laycon ſaid, the Action in Bank is taken by Covin of the Defendant, and he *confeſſes part to be committed to the Fleet, and ſo to be diſmiſs'd in London*, and then the Plaintiff here will releaſe the Condemnation here to him, and pray to examine the Covin ; For it is not any Duty between the now Plaintiff and the Defendant in this Court, and for the Suſpiciouſneſs Priſot awarded the Defendant to the Fleet for the Condemnation confeſs'd, and when that is ſatisfied, keep him for the Plaint in London; For when he has ſatisfied this Plaintiff he ſhall be remanded into London. And ſo ſee that the Covin ſhall not aid him ; For he thought by the committing to the Fleet to be diſcharg'd in London, and ſo Ars deluditur Arte, for Fraus memini debet patrocinari &c. Br. Privilege, pl. 31. cites 39 H. 6. 50. ——— Br. Colluſion &c. pl. 24. cites S. C.

† Br. Colluſion &c. pl. 15. cites S. C. ——— Br. Judgment pl. 18 cites S. C. ——— Fitzh. Proclamation, pl. 14. cites S. C. ——— Br. Proclamation, pl 2. cites S. C.

This in Dyer 149. a. pl. 80. 3 & 4. P. & M. is a Quære ſtarted in the Caſe,

2. If Land be alien'd pending a Writ of Debt by Covin, to avoid the Extent thereof for the Debt, yet when the Covin appears upon the Return of the Elegit by the Sheriff, the Land ſo alienes ſhall be extended. D. 3, 4. Ma. 149. 80.

and Brooke thought that upon ſuch Return by the Sheriff a new Writ ſhould iſſue reciting it. ——— Ibid. Marg. cites Trin. 33 Eliz. B. R. Rowſe's Caſe who brought Debt againſt B. as Heir, who pleaded Riens per Deſcent the Day of the Writ, and found that before the Writ brought he had alien'd the Aſſets by Covin to defraud this Debt, and Judgment for the Plaintiff ; and that it is well found for him upon Office of Aſſets by Deſcent.

The Goods are liable to the Creditors in the Vendee's Hands,

3. If a Man makes a Deed of Gift of his Goods in his Life-time by Covin to ouſt his Creditors of their Debts, yet after his Death the Vendee ſhall be charged for them. 13 H. 4. 4. b.

as Executor of his own Wrong, if the Gift be Fraudulent ; and Judgment accordingly. Cro. J. 271. pl. 3. Hill. 8 Jac. B R. in Caſe of Hawes v. Leader. ——— Yelv. 196. S. C. adjudg'd per tot. Cur. ——— 2 Le. 223. pl. 284. Hill. 16 Eliz. S. P. by Dyer.

4. If the *Tenant in Formedon confeſſes the Action* by Covin to make a third Perſon loſe his Entry, *Proclamation ſhall be made*, and if the third Perſon comes and alleges the Covin, the Matter ſhall be examined, and the Judgment ſhall ſtay, and the *Party ſhall be puniſhed.* Br. Formedon, pl. 22. cites 7 H. 4. 19.

5. A

5. A Man was *arreſted in London*, and *after another brought Action againſt him in Bank*, and had him arreſted by Capias *by Covin*, by which they ſurceaſed in London; for by this he is a Priſoner to the Bench; and the Plaintiff in London prayed Procedendo, and that the Covin might be examined. Per Cur. we cannot examine the Covin yet, for the Capias is not returnable till 15 Hill. But per Littleton, if he does not come at the Day, and be let to Mainpriſe, the Plaintiff in London may have a new Bill againſt him. Br. Privilege, pl. 41. cites 10 E. 4. 16.

6. A Man ſued *Corpus cum Cauſa out of London*, and it was found by Examination, that *the Action by which he claimed Privilege was ſued by Covin*, for the Plaintiff in Bank diſallowed his Suit againſt this Priſoner; for the Suit *was diſcontinued by two Years, and now revived* by the Plaintiff and the Attorney *in Advantage of the Priſoner*, where another Suit was thereof taken of late Time againſt the Priſoner, by which, upon the Examination of the Matter, and Attorney, and the Plaintiff, in this Court, for their Falſity, were committed to the Fleet, and were fin'd, and the Priſoner remanded to London. Br. Privilege, pl. 43. cites 16 E. 4. 5.

7. A Man had a *Grant of the next Preſentation*; The *Church voided*. A. B. preſented; The *Grantee brought Quare Impedit and recovered*, and had Writ to the *Biſhop*, who *returned that the Grantee of A. B. had reſigned, and another is in*, by which the Plaintiff had Scire Facias to execute the Judgment though there be the two Avoidances; for *he ſhall recover upon the firſt Avoidance*, and the *Act of the Defendant ſhall not prejudice the Plaintiff*; for then by Covin the Grant never ſhould take Effect; Per Frowike Ch. J. Br. Scire Facias, pl. 141. cites 21 H. 7. 8.

8. A *ſimple Man drawn to make Leaſes, and* to enter into *Bonds* was relieved. Toth. 268. cites Cuddington v. Hutton, in 8 Jac. fol. 905.

9. A Man *relieved againſt his own Deed*, the ſame being gotten by Threats and Practice, *though* the ſame be *veſted in an Infant*, and the Purchaſor to become bound in Recognizance to aſſure it when &c. Toth. 268. cites Maneright v. Roberts, 10 Jac.

10. The Plaintiff relieved *againſt his own Releaſe*, being an ignorant Perſon. Toth. 268. cites Sumner v. Tilling, 12 Jac. li. A. fo. 49.

11. Judgment was had *in a Sci. Fa. againſt the Wife upon a former Judgment*, and after *two Nihils returned* a Motion was made to quaſh it, becauſe *before the Sci. Fa. brought, ſhe was married, and this Writ* was *brought againſt her as ſole, by the Contrivance of the Husband and the Plaintiff*, to oppreſs her and lay her in Priſon; and it was ſhewn, that the Plaintiff knew that ſhe was married, and that ſhe could have no Relief either by Writ of Error or Audita Querela, becauſe the Husband would releaſe it. The Court ſaid, they might *ſet aſide the Judgment* for this Miſdemeanor of the Plaintiff. Vent. 208. Paſch. 24 Car. 2. B. R. the Lady Prettyman's Caſe.

(D) Pleadings.

1. ENTRY *in the Poſt*; the *Termor for Years* by the Statute of Gloucester *prayed to be received by Default of the Vouchee*, and *ſaid, that the Recovery was by Covin between the Demandant and the Tenant who leaſed to him* &c. *to make him loſe his Term*, and *traverſed the Diſ-*

ſeiſin;

ſeiſin; and per Pollard and Fitzherbert J. clearly, the Covin is not material without traverſing the Point of the Writ; and therefore the *Covin* alleged, and the *Traverſe of the Diſſeiſin* is not double; Quod Nota; For he is compelled of Neceſſity to ſpeak of both, and therefore it is not double; Quod Nota. Br. Double, pl. 55. cites 14 H. 8. 4.

2. Covin is *not traverſable by Plea* but only in Evidence at the Bar. Winch. 90. Trin. 22 Jac. C. B. Adams v. Ward.

For more of Covin in General, See **Fine** (E. b. 3) (I. b. 4) **Fraud. Payment. Remitter.** And other Proper Titles.

Counſellor.

(A) Conſidered; How; And in what Caſes favoured or not.

1 THE *Fees to Counſellors are not in Nature of Wages, or Pay,* or that which we call *Salary, or Hire,* which are Duties certain, and grow due by Contract for Labour or Service, but *what is given him is Honorarium, not Merces,* being a Gift which gives Honour as well to the Taker as the Giver; nor is it certain or contracted; for No Price or Rate can be ſet upon Counſel which is invaluable and ineſtimable, ſo as it is more or leſs according to the Circumſtances, namely, the Ability of the Client, the Worthineſs of the Counſellor, the Weightineſs of the Cauſe, and the Cuſtom of the Country. It is a Gift of ſuch a Nature, that the able Client may not neglect to give it, without Ingratitude, for it is but a Gratuity, or Taking of Thankfulneſs; yet the worthy *Counſellor may not demand it without doing wrong to his Reputation,* according to that moral Rule, Multa Honeſta accipi poſſunt quæ tamen peti non poſſunt. Pref. to Dav. Rep. 22, 23.

2. *5 Eliz. cap. 14. S. 15. Counſellor not puniſhable for Pleading, or ſhewing a falſe Deed in Evidence, to the forging whereof he was not Party nor privy.*

Ibid. cites 6 Car. Thimblethorp v. Thimblethorp, S. P.

3. The Counſel of the Party's Cauſe not to be examined in the ſame Cauſe. Toth. 110. cites 11 Eliz. Lee v. Markham.

4. The *Counſellor's Clerk* not to be examined in the Cauſe. Toth. 110. cites 13 & 14 Eliz. fo. 93. Breame v. Breame.

5. Daniel Hill having put in for his Client a *long inſufficient Demurrer to a Bill* exhibited againſt his Client, in which ſuppoſed Demurrer were many matters of Fact, and other Things frivolous and vain, the Lord Chancellor Egerton awarded 51. Coſts againſt the Party, and *ordered, that neither Bill, Anſwer,* Demurrer, nor any other Plea ſhould from

from thenceforth *be receiv'd under the Hand of the ſaid Hill.* Cary's Rep. 38. cites 27 April. 1 Jac. Hill's Caſe.

6. A Counſellor in Law retained, has a Privilege to inforce any Thing, which is informed him by his Client, and to give it in Evidence, it being pertinent to the Matter in Queſtion, and not to examine whether it be true or falſe; but it is at the Peril of him that informs him; for a Counſellor is at his Peril to give in Evidence that which his Client informs him, being pertinent to the Matter in Queſtion, otherwiſe Action upon the Caſe lies againſt him by his Client. Per Popham Ch. J. and Judgment accordingly. Cro. J. 90. pl. 18. Mich. 3 Jac. B. R. Brook v. Montague.

If a Counſel *ſpeaks ſcandalous Words againſt one in defending his Client's Cauſe*, an Action lies not againſt him for ſo doing; For it is his Duty to ſpeak for his Client and it ſhall be intended to be ſpoken according to his Client's Inſtructions. Per Glyn Ch. J. Sty. 462. Mich. 1655. B. R. Wood v. Gunſton. The Advice of that great and valuable Man Biſhop Sanderſon, to the Pleader viz. Counſellor, in his Aſſiſe Sermon at Lincoln, being the 3d Sermon ad Magiſtratum, pag. 164, is viz. Not to think becauſe he has the Liberty of the Court, and perhaps the Favour of the Judge, and that therefore his Tongue is his own, and he may ſpeak his Pleaſure to the Prejudice of the Adverſary's Perſon or Cauſe; and not to ſeek prepoſterouſly to win the Name of a good Lawyer, by wreſting and preverting good Laws; or the Opinion of the beſt Counſellor, by giving the worſt and the ſhrewdeſt Counſel; and not to count it, as Protagoras did, the Glory of his Profeſſion, by ſubtilty of Wit, and volubility of Tongue to make the worſe Cauſe the better; but like a good Man, as well as a good Orator, to uſe the Power of his Tongue to ſhame Wit and Impudence, and protect Innocency, to cruſh Oppreſſors and ſuccour the Afflicted, to advance Juſtice and Equity, and to help them to Right that ſuffer Wrong, and to let it be as a ruled Caſe to him in all his Pleadings, not to ſpeak in any Cauſe to wreſt Judgment.

7. But *Matter not pertinent to the Iſſue* or the Matter in Queſtion, he need not to deliver; For he is to diſcern in his Diſcretion what he is to deliver, and what not; and altho' it be falſe, he is Excuſable, being pertinent to the Matter. Cro. J. 90. pl. 18. Mich. 3 Jac. B. R. in Caſe of Brook v. Montague.

8. But if he *gives in Evidence any Thing not material to the Iſſue which is Scandalous*; He ought to aver it to be true, otherwiſe he is puniſhable; For it ſhall be intended as ſpoken maliciouſly and without Cauſe; which is a good ground for an Action. Cro. J. 9. pl. 18. Mich. 3 Jac. B. R. in Caſe of Brook v. Montague.

9. *So* if a Counſellor *objects Matter againſt a Witneſs which is Slanderous*; If there be Cauſe to diſcredit his Teſtimony, and it be pertinent to the Matter in Queſtion; It is juſtifiable what he delivers by Information, altho' it be falſe. Cro. J. 91. pl. 18. Mich. 3 Jac. B. R. in Caſe of Brook v. Mountague.

10. Counſellor may take Fees of his Client, but he may not *lay out Money* for him, and if he does, Hobert Ch. J. doubted what Remedy he might have. Winch. 53. Mich. 20 Jac. C. B. Gage v. Johnſon.

11. Counſellor brought a *Bill for Fees*, due to him from the Defendant being a Sollicitor, and was to account with him at the end of every Term; the Defendant demurs. Demurrer was allowed and the Bill diſmiſs'd. Chan. Rep. 38. 15 Car. 1. Moor v. Row.

12 A Lawyer who was of Counſel may be *examined upon Oath as a Witneſs to the Matter of Agreement, not to the Validity of an Aſſurance, or to matter of Counſel.* Mar. 83 pl. 136. Paſch. 17 Car. Anon.

13. If a *Counſellor ſays to his Client that ſuch a Contract is Simony*, and the Client ſays he will make it, Simony or not Simony; and thereupon the Counſellor makes this Simoniacal Contract, it is no Offence in him. Per Reeve J. Mar. 83. in pl. 136. Paſch. 17 Car. Anon.

14. A Counſel was examined as a *Witneſs* to prove the *Death of a Perſon*, yet he is not bound to anſwer to other Things which may diſcloſe the *Secrets of his Client's Cauſe.* Per Roll. Ch. J. Sti. 449. Paſch. 1655. Waldron v. Ward.

15. *Coſts* were tax'd for Scandal in a *Bill in Chancery* at 100 l. but tho' the Scandal was very great, yet my Ld Chan. and the Judges reduc'd it to 50 l. and the Counſel, whoſe Hand was ſet to it, to pay the Defendant 5 l. more. Chan. Rep. 194. 12 Car. 2. Emerſon v. Dalliſon.

16. Bill

16. Bill by Executors of a Counſellor for *a Sum in groſs for Advice and Pains* of their Teſtator in ſeveral Cauſes, wherein Defendant was concerned, Defendant *demurr'd* becauſe if he ſhould anſwer the Bill it would draw him under a Penal Law, it being againſt the Courſe of all Courts of Juſtice for any Counſellor at Law to make ſuch Contract as in the Bill is ſuggeſted for his *Fees in a groſs Sum* to be paid upon the Event of any Cauſe. Therefore this is a Bill of ſuch a Nature as ought not to have any Countenance in a Court of Equity; Demurrer allow'd. Fin. R. 75. Hill. 25 Car. 2. Penrice v. Parker.

Ordered that he be not Examined on any Matter in which he was of Counſel *either by indifferent Choice of both Parties, or with either of them*, by reaſon of any Annuity or Fee. Cary's Rep. 143. in Caſe of Dennis v. Codrington.——It is againſt the Duty of a Counſellor to diſcover the Evidence, which he who retains him, acquaints him with; Admitted by Hale Ch. J. Vent. 197. Paſch. 24 Car. 2. B. R.

17. What a Counſellor *knows only* as Counſellor, and under a Contract of Silence he ſhall *not be put to anſwer*. Chan. Caſes 277. Trin. 28 Car. 2. Bulſtrode v. Lechmore.

18. Contra. where it is to diſcover a Settlement in *Truſt for payment of Debts*. 2 Chan. R. 29. Shalmer v. Treſham.

19. The Bill was *to diſcover an ancient Bill of Entail, ſuppoſed to be in the Defendant's Hands, and that he had peruſed it, and that in Diſcourſe he had acknowleged ſuch Deed* and other like Charges. The Defendant *ſays by Plea* that he was a Counſellor with A. B. *That on a Reference* between the Parties, *it was agreed that nothing that paſſed then ſhould be made uſe of on either Side*, or be diſcloſed. Chan. Caſes 277. Trin. 28 Car. 2. Bulſtrode v. Lechmore.

20. A Counſel may be a *Witneſs* if he voluntarily agreed to depoſe the Truth, but he is not compellable ſo to do (though it has been held otherwiſe formerly); by three Judges contra Holt Reſolv'd. Cumb. 467, 468. Hill. 10 W. 3. B. R. Matthews v. Temple.

21. In the Caſe where Mr. *M..... formerly an Attorney of the Court, (now Counſellor at Law) was accuſed of foul Practice* in his Profeſſion; The Court ſaid, *though he be now a Counſel, yet perhaps that will not diſcharge him* from being an Attorney ſtill; and then we may get his Demands taxed as ſuch. And does any Body think, but that a Counſellor at Law is a kind of a Miniſter of Juſtice, and Right, and as ſuch, puniſhable for Misbehaviour in his Profeſſion? And Holt Ch. J. ſaid to him will you have the Point tried whether a Counſellor at Law may commit an Extortion? 6 Mod. 137. Paſch. 3 Ann. B. R. Anon.

22. One Mr. Dean, who was a Barriſter at Law, having *made a Bill as a Sollicitor*, a Motion was made to tax it, which was granted, but the Court ſaid that if he inſiſted upon having his Bill paid, they would hereafter treat him as a Sollicitor; And Mr. Juſtice T. Powys ſaid, that ſo it was ruled in Chancery by my Lord Chancellor Harcourt, in the Caſe of one Mr. Alſton, and *if Gentlemen would not take Fees after the uſual Manner they ought not to recover them by any Action at Law.* Hill. 12 Ann. B. R.

23. Notwithſtanding Counſellors are not Officers of any Court, nor inveſted with any judicial Office, but barely Practiſe as Counſellors; yet inaſmuch as they have a ſpecial Privilege to practiſe the Law, and their Misbehaviour tends to bring a Diſgrace upon the Law itſelf; it ſeems clear that they *are puniſhable for any foul Practice* as other Miniſters of Juſtice are. 2 Hawk. Pl. C. 151. Cap. 22. S. 30.

24. It is certain, that no Counſellor or Attorney can juſtify the uſing any *deceitful Practice, in Maintenance of a Client's Cauſe*, and that they are liable to be ſeverely puniſhed, for all Miſdemeanors of this Kind, not only by the Common Law, but alſo by Statute; For it is enacted by *Weſtm. 1. cap.* 28. That if any Serjeant, Pleader or other, do any

Manner

Manner of Diſceit or Culluſion in the King's Court or conſent unto it, in Diſceit of the Court, or to beguile the Court or the Party, and thereof be attainted, he ſhall be impriſoned for a Year and a Day, and from thenceforth ſhall not be heard to plead in that Court for any Man. And if he be no Pleader, he ſhall be impriſoned in like Manner by the Space of a Year and a Day at the leaſt. And if the Treſpaſs require greater Puniſhment, it ſhall be at the King's Pleaſure. In the Conſtruction of this Statute the following Points have been holden. 1ſt. That Counſellors &c. who are not ſworn, are as much within the Meaning of it as Serjeants &c. who are ſworn. 2dly, That all Fraud and Falſhood tending to impoſe upon or abuſe the Juſtice of the King's Courts are within the Purview of it. Hawk. Pl. C. 254. cap. 83. S. 28, 29, 30.

For more of Counſellor in General, See other Proper Titles.

(A) Counterfeits.

1. 33 *H.* 8. *cap.* 1. ENacts that *obtaining Money by any falſe Token or Counterfeit Letters, and being convicted thereof by Witneſſeſs or Confeſſion before the Lord Chancellor, Juſtices of Aſſiſe, Juſtices of the Peace, or by any Action in any Court of Record, ſhall be puniſhed at Diſcretion, the Pains of Death only excepted.*

3 Inſt. 133. cap. 60 ſays, that here it is to be obſerved, that upon this Statute for this Offence, the Offender cannot be fined, but Corporal Puniſhment only inflicted ——— But where T. was indicted upon this Statute, becauſe he by a falſe Note in the Name of J. D. obtain'd into his Hands a Wedge of Silver of 200 l. Value, of which he was found Guilty, and had Judgment to ſtand on the Pillory, and alſo to pay a Fine to the King of 500 l. and to be impriſon'd during the King's Pleaſure; and to be bound with Sureties for his good Behaviour. Cro. C. 564. pl. 10. Mich. 15 Car. B. R. Terry's Caſe.

2. An *Eſtate* that is to be *deveſted* on a Condition of Payment of 100 l. cannot be deveſted by a *ſham Payment*, of part and real Payment of Part, but there muſt be a real Payment of the whole. Cro. E. 383. pl. 4. Paſch. 37 Eliz. B. R. Goodale v. Wiatt.

3. A Clothier of G. made Clothes which were dearer and more vendible than the Clothes of any other, and he put a *ſpecial Mark* upon them; another Clothier counterfeits the ſaid Mark and puts it on his Clothes which were not ſo good, but yet ſells them as dear as the other; Action on the Caſe lies againſt him; Doderidge J. ſays it was adjudg'd 23 Eliz. in C. B. but ſays, not whether the Action lay for the Clothier or the Vendee, but it ſeems it is for the *Vendee*. 2 Roll Rep. 28. Trin. 16 Jac.

Cro. J. 471. ſays it was brought by the Vendee. ——— S. C. cited per Doderidge J. as brought by the Clothier. Poph. 144.

If an Information lies for counterfeiting *a Letter* ſending for a Perſon in another's Name to Brentford to come to him, when no Miſchief is done or intended? Court divided. 2 Show. 20. pl. 13. Mich. 30 Car. 2. B. R. the King v. Emerton.

For more of Counterfeits in General, See other Proper Titles.

Countermand.

(A) What is or amounts to a Countermand; And of what it may be.

1. IF A. *gives me* 20 *l. to diſpoſe for his Soul after his Death*, A. ſhall not have Debt nor Account, for this amounts to a Gift as it ſeems; Per Needham. Br. Done &c. pl 52. cites 8 E. 4. 5.

2. *Money* given *to beſtow in Charity* may be countermanded till beſtowed. D. 22. pl. 135. Trin. 28 H. 8.

2 Roll Rep. 40. S. C. cited —Cart. 142. S. C. cited Arg.

3. There is a Diverſity where ſuch *Gift* is made to a Stranger *to deliver over* of his mere Will and Pleaſure, As a New Year's Gift &c. or *on a Conſideration* or former Duty, or in Satisfaction of another Thing. D. 49. pl. 9, 10, 11. Paſch. 33 H. 8. in the Caſe of Lyte v. Penny.

But if it be *Solvend to C.* which is intended in Satisfaction of a Debt it is not Countermandable; Agreed. Arg. Cro. J. 687. pl. 1. Trin. 22 Jac. B. R. Harris v. Bevoire.——2 Roll R. 440. S. C.

4. *Money bailed* to A. by B. *Ad Opus & Uſum* C. yet till the Delivery to C. the Property continues in A. and he may countermand it. D. 49. b. pl. 14, 15.

5. A. *purchaſed 5 Marks per Annum in the Name of B. and C. with this Truſt* that A. might *enjoy it during his Life, and after* it ſhould be *to the erecting of a School* in the Town where the ſaid A. was born and buried, as the Feoffees declared in their Anſwer; And in his Life-time, after the Purchaſe, he *repealed his Intent* of converting the ſame to the Uſe of the School, and deviſed the ſame to J. S. which Juſtice Warburton preſently decreed for him, ſaying his Will was his Declaration. But in his Words there was but a Meaning only expreſt (me contradicente) for if J. C. make a Feoffment to the Uſe over according to articles annexed, he cannot alter the ſame by a latter Will, contra if it be to the Uſe of his Will. Cary's Rep. 40, 41. cites 19 June, 1 Jac. Littleton's Caſe.

6. A. being *indebted* to B. in 100 l. bailes 100 *l. to C. to pay B.* yet before Payment A. may countermand it. For A. himſelf may have paid it afterwards. D. 49. a. Marg. pl. 10. cites Mich. 4 Jac. in Scacc. Turberville v. Porter.

S. P. per Doderidge J. but per Haughton J. contra; but Haughton ſaid, it may be conſidered in Damages. ——— So where it was *to take a Journey to London and help to find a Will*, and before any thing provided for the Journey of the Defendant, it was accorded and agreed betwixt Plaintiff and Defendant, that Plaintiff ſhould be diſcharged of his Journey, and Defendant of Payment, Judgment was for the Plaintiff; but it ſeems, if the Matter had been well pleaded it would have been adjudged for the Defendant. See Cro. J. 620. (bis) pl. 10. Mich. 18 Jac. B. R. Treſwaller v. Keyne.

7. If I ſay to you, *Build for me ſuch a Houſe and I will give you* 10 *l.* And before you have provided Materials, or have been at any Charge, I will revoke my Promiſe, and countermand my preſent Agreement, it is not good; For Meum eſt Promittere, & non Dimittere; Per Croke J. 2 Roll R. 39. in Caſe of Winter v. Foweracres.

8. But where it is *by way of Contract* it is not countermandable. 2 Roll R. 39. Trin. 16 Jac. B. R. per Doderidge and Crooke Juſtices, in Caſe of Winter v. Foweracres.

9. Defendant *promiſed* the Plaintiff, *that if Plaintiff would procure a Feme impriſoned to be delivered out, he would repay him all ſuch Monies as he ſhould diſburſe* therein. Defendant pleaded, that before the Plaintiff had paid any Money for her Delivery, and before the Plaintiff had done any thing relating to it, he revok'd his Promiſe, and countermanded the Plaintiff, that he ſhould do nothing as to her Delivery. Adjudged by 3 Juſtices that he could not countermand it. 2 Roll Rep. 39. Trin. 16 Jac. B. R. Winter v. Foweracres.

10. *The Law reſpects Matters of* Profit and Intereſt *largely, but of* Pleaſure, Skill, Eaſe, Truſt, Authority, and Limitation, *ſtrictly*; and therefore theſe may be countermanded, but ſo cannot the other. See Fin. 8. b. Wing. Max. 376. to 381. &c.

11. A *Feme ſole infeoffed a Man within the View, and directed him to enter without other Livery.* They *intermarry before any Entry* made by him, and *then he enters*; Adjudg'd that the Entry was good after Marriage, and *not countermanded by the Marriage.* 2 Lev. 34. Hill. 23 & 24 Car. 2. B. R. Parſons v. Pierce. But ſays, that perhaps it might be otherwiſe had ſhe married a Stranger. Vent. 186. Parſons v. Perus, S. C. reſolved accordingly. —— Mod. 91. pl. 59. Parſons v. Perns, S. C. ſtates it, that the Feme was Jointenant in Fee with another, and adjudged that the Entry was good. —— 2 Keb. 872. pl. 29 S. C. adjornatur. Ibid. 880. pl. 57. S. C. adjudged accordingly. —— 3 Salk. 165. Parſons v. Pettit, S. C. accordingly. —— Pollexf. 45. S. C. argued and adjudged.

12. A Man gives a *Warrant of Attorney* to confeſs a Judgment, and dies before the Judgment is confeſſed; this is a Countermand. Vent. 310. in a Nota. Paſch. 29 Car. 2. B. R.

13. A. *poſſeſſed of an Office for two Lives executes a Deed*, appointing, that after his Death one R. H. then in his Office ſhould be Deputy, *and directs ſeveral Annuities to be paid out of the Office.* Afterwards *A. by a ſubſequent Deed made different Appointments of the Profits* of the Office. A. kept both Deeds in his own Cuſtody during his Life; and in Support of the firſt Deed it was inſiſted, that it was an abſolute Diſpoſition of the Profits of the Office without any Power of Revocation, and ought to ſtand, and that though both Deeds were all along in his Cuſtody, yet ſo (generally) Voluntary Settlements are, and yet the firſt ſhould prevail. But Ld. Chancellor held, that the *firſt Deed was only an Authority*, and therefore clearly countermandable by the ſecond, and decreed the firſt Deed to be delivered up. Wms's Rep. 101. Mich. 1707. Young v. Cottle.

14. Though a *Letter of Attorney* is revocable at Common Law, yet where it *concerns Payment of Debts* it ſhall be continued *in Equity.* G. Equ. R. 70. Paſch. 9 Ann. in Caſe of Hungerford v. Hungerford.

For more of Countermand in General, See Marriage (H) Powers. And other Proper Titles.

Court

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Court.

(A) Office of the Court.
[Or what the Court may adjudge without being found by Jury, pl. 1, 2.]

S. C. cited by Hide J. Mod. 139. —— S. P. admitted as to removing Hay rick'd by Licence on the Land of another. Godb. 282. pl. 401. Hill. 17 Jac. B. R. Webb v. Paternoster ——— 2 Roll Rep. 143. 152. S. C. & S. P. agreed. ——— Poph. 151. S. C. & S. P. resolved. ——— Palm. 71. S. C. & S. P. adjudged that the Plaintiff had convenient Time.

1. WHAT shall be said a reasonable Time, shall be adjudged by the Discretion of the Justices before whom the Cause depends. Co. Lit. 56. b.

* Resolved accordingly, that it may be either on Demurrer or on Evidence to the Jury.

2. What shall be said a reasonable * Fine, Custom, or Service, shall be adjudged by the Discretion of the Justices before whom the Cause depends, upon the true State of the Case depending before them; for Reasonableness in these Cases appertains to the Conusance of the Law, and therefore to be decided by the Justices. Co. Lit. 56. b. 59. b.

upon Confession or Proof of the annual Value of the Land. 4 Rep. 27. b. pl. 16. Mich. 42 & 43 Eliz. B. R. Hubbard v. Hammond. — S. C. cited by Hide J. Mod. 139. —— Where a Fine for Admittance to a Copyhold is arbitrable at the Will of the Lord, and he imposes a Fine, the Jury is to try whether it be reasonable or not; Per Cur. Cro. E. 351. pl. 3. Mich. 36 & 37 Eliz. B. R. Jackman v. Hoddesdon. —— See Tit. Trial (F) pl. 5. and the Notes there.

Bridgm. 110. S. C. and Judgment in C. B. affirmed in B. R. ——— Cro. J. 508. pl. 20. Mich. 16 Jac. B. R. in Case of Roberts v. Trenaine, on an usurious Contract, the Verdict

3. If the Jury find a special Verdict, that A. mutuo dedit 500 l. to B. for which B. inseoffed A. of certain Lands, upon Condition, that if he paid to him 650 l. at a certain Day three Years after, it should be lawful for him to re-enter, and so leaves it to the Court, whether this be usury or not; though it appears here to the Court that more than 10 l. for 100 l. is reserved, having regard to the Profits which the Feoffee is to have by the Feoffment, which are found to a certain Value, yet because the Jury hath not found it to be Usury, the Court shall not adjudge it to be Usury, for there ought to be an usurious and corrupt Contract, of which the Court cannot have Conusance without the finding of the Jury. Mich. 15 Jac. B. R. between *Web and Worfield* adjudged in a Writ of Error upon a Judgment in Banco, where it was also adjudged.

found the Agreement prout &c. but did not find that Corrupte Agreatum fuit. It was objected, that it ought to have been found expresly to make it an Offence within the Statute; sed non allocatur; for there is a Difference between an Information, which ought to be precisely alleged, and a special Verdict, wherein all the Circumstances are found, which being apparent to the Court to be usurious, and cannot by Intendment have any other Construction, it sufficeth, and here it is apparent that the Money was lent for Interest, and is more than the Statute permits, and therefore being Usury apparent, the Court shall judge it accordingly, and cites it as adjudged in Case of Higgins v. Herum, that if the corrupt Agreement be not expressed in the Verdict, and the Matter is apparent to the Court to be Usury, the Jury need not shew that it was corruptly, for Res ipsa loquitur; but otherwise it is if it be only implied, wherefore it was adjudged for the Plaintiff.

4. **So if the Jury** find ſpecial Matter, [as] **Preſumptions and Circumſtances, that a Feoffment was made by Fraud, yet the Court cannot adjudge it to be** fraudulent **without the finding of the Jury that there was Fraud, becauſe that was Matter of Fact, and but Evidence of Fraud. Co. 10. Chancellor of Oxford,** * 57. b. **reſolved.**

* This ſhould be 10 Rep. 56. b. —— S. C. cited, & S. P. agreed. Lev. 279. Mich. 21

Car. 2. B. R. Smith v. Wheeler. ——— Mod. 38. S. C. cited, and S. P. agreed in S. C. —— Vent. 128. S. P agreed in S. C. ——— S. C. cited Bridgm. 112. and ſays, that it was ſo agreed in the Caſe of **Tyrer v. Littleton,** in C. B. for the taking of an Ox; The Defendant pleaded Not Guilty, and the Jury found, that Thomas Tyrer held certain Lands of John Littleton by Rent and Heriot, and in the 42 of Eliz. did infeoff John Tyrer his Son and Heir, who made a Leaſe to Thomas Tyrer for forty Years, if he ſhould ſo long live, to the Intent that Joyce, whom he intended to marry, ſhould not have her Dower during his Life. Thomas died poſſeſſed of the Ox, and the Defendant took it for a Heriot, and they found the Statute of fraudulent Conveyances &c. and it was adjudged, that foraſmuch as the Feoffment was not found by the Jury to be fraudulent, yet the Court could not adjudge it to be fraudulent, although the Jury had found Circumſtances and Inducements to prove the Fraud. ——— Brownl. 36. Trier v. Littleton, S. C. held accordingly, per tot. Cur. for the Judges have nothing to do with Matter of Fact. —— 2 Brownl. 187. Trin. 10 Jac. C. B. Tyre v. Littleton, S. C. adjudged for the Plantiff Niſi. —— S. C. cited per Cur. 10 Rep. 56. a. —— S. C. cited 2 Jo. 92. —— S. C. cited by Bridgman. Bridgm. 112. Mich. 14 Jac.

5. **If a Jury** finds, that J. S. with his own Money, procured Lands to be ſettled upon himſelf and B. his Son, **being** of the Age of 5 Years, and **finds** other Badges of Fraud, **and after** becomes Bankrupt, **but it is not found that this was done by Fraud, or in Truſt in himſelf, the Court ſhall not intend it; and therefore the Sale of ſuch Lands not lawful. Trin. 15 Car. B. R. between** *Criſpe and Pratt*, **per Curiam agreed upon a ſpecial Verdict.**

Cro. C. 548. &c. pl. 2. S. C. & S. P. agreed by all the Juſtices, contra Berkley, and Judgment accordingly

—— Jo. 437, 438. pl. 3. S. C. & S. P. by 3 Juſtices, contra Berkley. ——— Mar. 34. pl. 67. S. C. adjudged. ——— Fraud ſhall not be intended except it be expreſsly found. Cro. E. 291, 292. pl. Hill. 35 Eliz. B. R. Ridler v. Punter. — See Tit. Fraud (C) pl. 1. S. C. fuller in the Notes there.

6. Where an *Infant is Plaintiff in Aſſiſe*, the Court Ex Officio *ought to inquire of the Circumſtances at large*; *Per* Hank, which was not contradicted. Br. Aſſiſe, pl. 59. cites 12 H. 4. 19, 20. —— But ſee contrary for the Defendant. 28 Aſſ. 51. Ibid.

7. In *Aſſiſe*, they were at *Iſſue upon two Deeds pleaded with Warranty, and found for the Plaintiff, and the Diſſeiſin without Force and Arms, and ſo* ſee that is the Office of the Court to inquire of it, though it be not put in Iſſue; *But in Treſpaſs*, if the Iſſue ſhall be found for the Plaintiff, it ſhall be *intended to be with Force and Arms*, though it ſhall not be inquired or preſented. Br. Aſſiſe, pl. 67. cites 7 H. 6. 40.

8. Upon a Commiſſion out of Chancery an *Inquiſition* was return'd into the Exchequer *upon the Statute of Fugitives* 13 *Eliz.* which *found that Ld. P. being ſeiſed in Fee of divers Manors* &c. *covenanted to ſtand ſeiſed to certain Uſes, with a Proviſo that he might revoke and make void the ſame upon the Tender of a Ring of* 5 *s. Value. And* it was *further found that Ld. P. always after, till his Flight beyond Sea, took the Profits, and that his Flight was without Licence, and that he did not return according to the Proclamation made. But no Covin was expreſsly found.* The Barons at firſt doubted, but afterwards thought that the ſpecial Matter found by the Jury was ſufficient to inform the Court of Covin apparent, and therefore they awarded a ſeiſure of the Land. Mo. 193. pl. 343. Trin. 26 Eliz. Ld. Paget's Caſe.

D. intending to go beyond Sea, convey'd his Land by Indenture inroll'd, but the Bargainees were not privy to the Deed till afterwards, and in it was a Proviſo to be void on Tender of 10s. &c. D. went beyond Sea with Licence of the King, but on Misbehavior there, a Privy Seal was delivered to him, commanding him to return on Pain of Forfeiture of all his Lands. Upon a Commiſſion to inquire what Lands &c. D. or any other to his Uſe had, the Jury found this ſpecial Matter, but found not any Fraud expreſly, whereupon the King exhibited his Bill in the Exchequer againſt the Bargainees &c. who truly diſcover'd all this ſpecial Matter. The Court decreed for the King. And Warneford's Caſe D. 193. and 267. [another Caſe] were cited, but

but ſaid, that the principal Caſe differs from them in two material Circumſtances which alter the Law in the Caſes; 1ſt. That this is in a Court of Equity by Engliſh Bill, where the Judges are to adjudge upon the Fraud only, and there they were in a Court of Law, and the Fraud was matter of Fact, which ought to be expreſly found by the Jury as appears by the Books. 2dly. In that Caſe the Jury found expreſly that the Conveyance was not by Fraud to deceive the King of his Wardſhip, but only to deceive the Creditors &c. whereas in the principal Caſe there is no ſuch Negative, and therefore differs much. Lane 42. 48. Paſch. 7 Jac. in the Exchequer. The King v. the Earl of Nottingham, alias, Dudley's Caſe.

9. In *Trover and Converſion* of Plate and Jewels &c. if the *Defendant pleads Not Guilty*, now it is good Evidence Prima Facie to prove Converſion that the Plaintiff requeſted the Defendant to deliver them and he refuſed, and conſequently it ſhall be preſum'd that he has converted them to his own Uſe, but yet this is only Evidence; and *if it be found by ſpecial Verdict in ſuch Caſe that the Plaintiff requeſted them of the Defendant and he refuſed, this is not ſuch Matter whereupon the Court may adjudge any Converſion*; Per Coke Ch. J. 10 Rep. 36. b. 57. a. Trin. 11 Jac. Obiter.

Br. Treſpaſs. pl. 368. cites 22 E. 4. 27. [and the Caſe as cited in Mod. ſeems to be miſprinted.] ——Cro. J. 204. pl. 6. Hill. 5 Jac to be determined by the Court.

10. *Leſſee for Life makes a Leaſe for Years and dies within the Term.* If *Treſpaſs* be brought by the firſt Leſſor againſt the Leſſee for Years, he ought by his Plea to ſet forth what Day his Leſſor died, and at what Place, and where the Land lies, and at what Day he left the Poſſeſſion, and ſo leave it to the Diſcretion of the Court whether he did quit the Poſſeſſion in reaſonable Time or not. Per Hide Ch. J. Mod. 139. Trin. 15 Car. 2. cites 22. E. 4. 18.

B. R. Stodden v. Harvey S. P. admitted as to the Reaſonableneſs of the Time being

(B) Of what Things the Court ſhall take Conuſance *ex Officio.*

1. IN an Action upon the Caſe upon a Reſcous, if the Plaintiff declares, that A. was indebted to him by Obligation in 20l. and that he ſued a Writ againſt him directed to the Sheriff of Cornwal to take A. &c. and that the Sheriff thereupon, 1 Oct. 6 Car. arreſted him apud Launceſton in Comitatu Cornubiæ, and after the Defendant apud Weſtmonaſterium reſcued him out of the Cuſtody of the Sheriff bringing him A. towards Weſtminſter the ſaid 1 Oct. 6 Car. upon Not Guilty pleaded, if a Verdict and Judgment be given againſt the Plaintiff [Defendant] and he brings a Writ of Error, and aſſigns it for Error, that (*) it was impoſſible he could be arreſted at Launceſton, and the ſame Day be reſcued at Weſtminſter, averring, That Launceſton is diſtant from Weſtminſter 200 Miles at leaſt; and thereupon in nullo eſt erratum is pleaded, by which it is acknowledged, that Launceſton is ſo many Miles diſtant from Weſtminſter, yet the Court will not intend it to be impoſſible for him to be reſcued at Weſtminſter the ſame Day. P. 9. Car. between *Kendall and Kendall*, adjudged in Camera Scaccarii in a Writ of Error upon a Judgment given in Banco Regis.

* 524.

Cro. J. 3. pl. 2. Arg. S. P. cites 11 H. 7. 15. 4 E. 3. 13. and D 306. Puttenham's Caſe. ——Cro. J. 68. in pl. 5. Paſch. 3 Jac B. R. the S. P. per Cur. as to the Court of Chancery. ——S. P. by Brampſtone Ch. J. Cro. and 528. Hil'. 14 Car. B. R.

2. Every Court of Weſtminſter ought to take Notice of the Cuſtoms of other Courts of Weſtminſter. Co. 2. Lane 16. b. 2 R. 3. 9. b.

B. R. in Caſe of Mounſon v. Bourne.——Pl. C. 320. b. 321. a. S. P.——4. Rep. 93 b. S. P. and cited 6 E. 4. 1. and 11 E. 4. 1.——Jo. 417, 418. pl. 5 S C. and S. P. per Cur.

3. But otherwiſe it is of Inferiour Courts. Co. 2. Lane 17. 2 R. 3. 9. b. But the *Counties Palatine* and the *Grand Seſſions of Wales* are not accounted ſuch Inferiour Courts, but the Courts of Weſtminſter ſhall take Notice of the Proceedings of thoſe Courts. Saund. 74. Paſch. 19 Car. 2. Arg. and admitted by three Juſtices, and cited Cro. C. 179. pl. 2. Hill. 5 Car. B. R. Griffith v. Jenkins, whereof the Proceſs of the Grand Seſſions the Court of B. R. took Notice Judicially, and ſo Cro. E. 503. Mich. 38 Eliz. [Broughton v. Randal] this Court took Notice of the Cuſtom of Wales, to give Judgment final upon a Quod ei deforceat.——Sid. 331. pl. 13. S. P. per three Juſtices—— The King's Courts cannot Judicially take Notice of the Privileges of the Cinque Ports, which extend only to certain particular Towns. 2 Inſt. 557. But otherwiſe it is of a Judgement given in C. B. in a Præcipe of Lands that lie in any of the County Palatines of Cheſter, Lancaſter and Durham, for they are exempted from the Juriſdiction of the King's Courts, and within them are Jura Regalia, and plenary Juriſdiction, and ſo known to the King's Courts; for they take Notice of all the Counties in England, becauſe they be immediate to them for direction of Writs; and therefore altho' the Tenant doth admit the Juriſdiction of the Court in thoſe Caſes, the Judgment againſt him for any of ſuch Lands is void. And thus are the Doubts in ſome Books in this and other like Caſes fully reſolv'd.

4. If a Leaſe be pleaded to be made by the King under the Exchequer Seal, though this is not good by the Common Law, but by the Cuſtom of the Court of Exchequer, yet it is not neceſſary to plead or aver the Cuſtom of a Court; for the Cuſtoms and Courſes of every of the King's Courts are as a Law, and the Common Law takes Notice of them without pleading. Co. 2 Lane 16. b. adjudged. S. C. cited per Cur. Cro. C. 513. pl 9. Mich. 14 Car. B. R.——S. C. cited by Bramſtone Ch. J. Cro C. 528. pl. 6. Hill. 14 Car. B. R.

5. A Man *convicted in Treſpaſs brought Attaint*, and it appeared to the Court that he *had not made Fine*, by which the Court ex Officio ſent him to Priſon. Br. Office del &c. pl. 13. cites 16 Aſſ. 4.

6. *Aſſiſe was taken* and the Juſtices thought that there was *Error in the taking* of it, by which they *would not render Judgment*. Br. Office del &c. pl. 23. cites 16. Aſſ. 6. and ſays ſee 4 H. 6. 23. 35 H. 6. 24.

7. A Man indicted of Felony without any Counſel learned in Law, ſhewed Charter of Pardon diſagreeing from the Indictment and from his Name, and the Court perceiving that the King would pardon him remanded him to Ward, to purchaſe a better Charter &c. Br. Office del &c. pl. 25. cites 26. Aſſ. 46.

8. *Vicar General of the Biſhop* who has his Power in his abſence is no Officer immediate to the Court of Bank, nor the Court will not award Writ to the Biſhop to him in Quare Impedit before that it be ſo *certify'd*, per Thorp, quære who ſhall Certify it and how. Br. Office & Off. pl. 13. cites 38 E. 3. 12.

9. The *Court ſhall not take Conuſance of a Peculiar Juriſdiction*. Br. Preſentation pl. 13 cites 11 H. 4. 7. S P. But Judges ſhall be bound to take Notice *of a County*. Mar. 125. in pl. 204.

10. *As* if *Sheriff ſerves Proceſs in the Franchiſe* this is good, Quod Nota. Ibid.

11. In *Quare Impedit* if *clear Title to the King be confeſs'd by the Parties in Plea pending* between them we ought to award * Writ to the Biſhop for the King, tho' *he be not Party*. Per Hank and Hill. But Culpeper Contra, *Quære*. Br. Prerogative pl. 16. cites 11 H. 4. 17. * Br Prerogative pl. 106 cites F. N. B 38.

12. In Aſſiſe the Court of Office ought to *make the Aſſiſe to enquire if the Diſſeiſin was with Force*, by reaſon of the King's Fine. Br. Office del &c. pl. 11. cites 11 H. 4. 17. S P.

13. The

Br. Charter de Pardon pl. 16. cites S. C. — So that if the Felon would plead Not Guilty, the Court ought to refuſe it by reaſon of the Pardon. Br. Notice. pl. 1. cites 26 H. 8. 7.

13. The Court will not nor ought not to *Arraign a Felon* of Felony *pardoned by Act of Parliament*, though the *Felon prays it* ; quod nota ; For every one ſhall take Notice of the Act of Parliament. Br. Corone. pl. 30. cites 11 H. 41.

14. It was agreed that if the Party *Defendant* will *admit an ill Writ or* ill *Count* or the like, yet if the Court perceives it, the Court ſhall not ſuffer it, and this ſeems to be reaſon ; For *Amicus Curiæ* may inform the Court of Error. Br. Error pl. 49. cites 11 H. 4. 45.

15. In *Quare Impedit* between two Parſons if it *appears to the Court that the King has Title by Mortmain or otherwiſe*, there the Court may ex Officio *award Writ to the Biſhop* for the King who is no Party to the Suit ; per Hill and Hank. Brooke ſays Quære legem inde. Br. Office del &c. pl. 20. cites 11 H. 4. 71.

Br. Faux. Latin. pl. 96 cites S. C. and ſays a Stranger as Amicus Curiæ may ſhew it, but Eſſoigner cannot plead it but ſhall ſhew it.

16. It was ſaid that the Court ex Officio is bound to abate the Writ, if it appears to them *by a thing Apparent in the Writ that it is not good*, As for falſe Latin, or for want of Form notwithſtanding that the Demandant make Default, and the Matter was inaſmuch as it was Rex Hiberniæ, where it ſhould be Dominus Hiberniæ. Br. Brief pl. 210. cites 4 H. 6. 16.

S. P. Br. Error pl. 50. cites 11. H. 4. 52. 65. 92. Per Hulſt. and that a Stranger may inform the Court of Error.

17. The Court ex Officio ought to *reverſe the Judgment if they ſee Error, though it be not aſſign'd* by the Party. Br. Error pl. 9. cites 9 H. 6. 46. per Cheyney.

18. *Quale jus* was *returned* and the *Jurors* were demanded and *appear'd*, and the Court of Office made *Proclamation if any would inform the King or his Serjeants* &c. and *none came* by which the Juſtices *demanded two of the Jurors to try the Polls*, and the Juſtices ſaid that they *ſhould inquire if this Juror, who was demanded, had any Thing within the Hundred, or if he be within the Diſtreſs of the Abbot, or if he be favourable*, and *ſo* it was done *of another*, who were *found indifferent*, &c. by which the Court diſcharg'd the firſt two, and the *other two try'd the Remainder of the Pannel*, and the Court ſaid to them that they *ſhould inquire if thoſe, who ſhall be Sworn, have ſufficient Franktenement within the County, and if they* are *within the Diſtreſs of the Abbot or favourable*, and after full Inqueſt &c. were commanded to *inquire of the Colluſion*, who found no Colluſion, by which the Abbot recover'd, and Brown demanded the Value of the Land per Ann. (to the intent the King ſhould have the Iſſues in the Mean time) who ſaid to 40 s. &c. Br. Office del &c. pl. 28. cites 20 H. 6. 38.

19. Note that it was not deny'd, but that where an Abbot or ſuch like has a *a peculiar or exempt Juriſdiction*, or *Lord of a Franchiſe has Returna Brevium* or the like, the Court will not take Conuſance thereof, but ſhall Write to the *Sheriff or Biſhop* and not to the other, quod nota ; For the other is not his *Officer immediate to the Court*. Br. Office and Off. pl. 2. cites 35 H. 6. 42.

20. *Aſſiſe of an Office*, and made his Title that he ought *to take for the Adjournment of every Eſſoign* 4*d*. and the *Court found by* Examination of the *Clerks that he ought not to have ſo much*, by which they awarded that he ſhould not make ſuch Title ; For they may have Notice of eve-

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ry Fee there; by which afterwards the Plaintiff amended his Title. Br. Office del &c. pl. 26. cites 8 E. 4. 22.

21. In *Treſpaſs* of taking his Beaſts, the *Defendaut ſaid that a Stranger held of him*, &c. *who leaſed to the Plaintiff* &c. *and for the Rent* &c. *he diſtrain'd*, the *Plaintiff ſaid Nothing in Arrear, and found for him*; And by the Opinion of all the Juſtices becauſe *the Statute is in the Negative*, Scilicet, *the Lord ſhall not therefore be puniſhed* &c. Now of his Confeſſion it appears that the Defendant is Lord in which Caſe this Writ nor Action does not lie, though the Defendant has admitted it, yet the *Court ſhall abate it* ex Officio; For *otherwiſe the Defendant ſhall be fined, which is contrary to the Statute.* Br. Office del &c. pl. 29. cites 10 E. 4. 7.

22. In Ward, the *Plaintiff ſurmis'd that the Anceſtor of the Infant dy'd in his Homage*; the *Defendant ſhew'd* a Gift in *Tail to the Anceſtor of the Infant, abſque hoc that he dy'd ſeiſed in Fee*; and it was debated if he ſhall traverſe the Dying ſeiſed in his Homage or not; and at *the End of the Term the Defendant would have amended his Bar*, and the Court would not ſuffer it; and Vaviſor who was with another Defendant would have changed his Paper, [Plea] and the Court would not ſuffer it. Br. Office del &c. pl. 30. cites 2 R. 3. 13.

23. *Debt upon an Obligation*, the *Defendant ſaid the Plaintiff is Outlaw'd*, and *pray'd thereof Judgment for the King*, Brian ſaid this cannot be, for the King has not Action thereof pending; *But* if the King brings *Detinue of the Obligation* and this Matter be confeſs'd, they may give Judgment. Br. Prerogative pl. 107. cites 4 H. 7. 17.

24. Of a *general Pardon* by Act of Parliament, the Juſtices ought to take Notice and to allow the Pardon though the Felon pleads Not Guilty, becauſe it is a general Act, quod nota. Br. Parliament, pl. 1. cites 26 H. 8. 7. Br. Charters de Pardon. pl. 1. cites S. C.

25. Though the Court ſhall take Notice of the *Cuſtom of Gavelkind in Kent* without pleading, yet of a *ſpecial Cuſtom to deviſe* &c. *or that the Lands are holden in Socage*, or *that the Feme ſhall have the Moiety for her Dower*, they ought not to take Cognizance without ſpecial Pleading, they *being Particular Cuſtoms*; But for the Cuſtom of Gavelkind it ſuffices to ſhew that it is in Kent and of the Nature of Gavelkind without pleading the Cuſtom; For the Court take Notice what the Cuſtom of Gavelkind is. Cro. C. 562. cites it as agreed in C. B. per tot. Cur. Mich. 41 & 42 Eliz. in Caſe of Launder v. Brooks. Raym 60. Arg. cites S. C. & S. P.

26. If on Demurrer on a Matter in Law though the Parties will join Iſſue on ſome one Point, upon which, if it ſtood alone, Judgment ſhould be given for the one Party; Yet if upon the whole Record matter in Law appears why Judgment ſhould be given againſt the ſaid Party, the Court muſt Judge ſo; For it is the Office of the Court *to judge the Law upon the whole Record*, and the Conſent of the Parties cannot prejudice their Opinions, nor quit them of their Office in that Point. And therefore though Montague in Caſe of **Dive v. Manningham**, Pl. C. 69. a. ſtaggers a little in that Point upon the Book of 34 H. 6. yet in the Concluſion he reſolves that the Court muſt Ex officio judge upon the whole Record. Hob. 56. in Caſe of Foſter v. Jackſon.

27. If a Judgment be given in London and this comes into B. R. we ought to take Notice of the *Cuſtom of London*, becauſe in the Court there the Cuſtom need not be alleg'd, and therefore if we in B. R. do not take Notice of it we may reverſe the Judgment, where there is not any Cauſe; But if a Cuſtom be in another Place we ought not to take any Notice thereof, without its being alleg'd; Per Doderidge J. and agreed by Coke Ch. J. Roll Rep. 106. pl. 47. Mich. 12 Jac. B. R.

28. The Court is not bound to take Notice *of the New Style*, but of the old Engliſh Style, (21 Car. B. R.) For the Old is that whereby all Accounts in the Common Law are guided, and not by the New which is Foreign, and goes 10 Days before the Engliſh Style or Account; The old Style is called the Gregorian; the former was made in the Time of Julius Cæſar the Emperor, the latter in the Time of Pope Gregory the 13th. 2 L. P. R. 235.

29. This Court of B. R. is *not bound to take Notice of Orders made, and* of *Things* which are *done at the Aſſiſes, although it be by a Judge of this Court*; becauſe he Acts not there as a Judge of this Court; Mich. 24 Car. B. R. For the Judges of Aſſiſes &c. do Act by ſpecial Commiſſions, and not as Judges of the Common Law of any of the Courts of Weſtminſter; but *the Manner is, upon an Order made at the Aſſiſes, to get it drawn up by the Clerk* of the Aſſiſes, *and to move the Court the next Term to have it made a Rule of Court*; and when that is done both Parties ſhall be bound by it. 2 L. P. R. 238.

30. This Court is not bound, ex Officio, to take Notice *of private Orders made at the Council-Table*: By Rolle Chief Juſtice. For they are Matters but of particular Concernment, and not Matters of Law or publick Buſineſs, whereof, as Judges, they are to take Notice. 2 L. P. R. 240.

31. This Court is to take Notice *of a General Statute*, viz. ſuch an one as concerns the Publick; for that is become a general Law that every Perſon is bound to take Notice of. *But not of a particular Statute* which concerns ſome particular Part of the Kingdom, or particular Perſons only, in their private Intereſt; For thoſe *publick Statutes are proved by* ſhewing the *printed Statute Book. But a particular Statute* muſt be proved *by an exemplification or Copy examined by the Record it ſelf*, and muſt be ſet forth particularly in all Declarations and Pleadings. But upon a general Act the Plaintiff may ſay, that the Defendant did ſuch a Thing, contra formam Statuti in hujusmodi caſu edit' & provis'. 2 L. P. R. 241, 242.

32. Court will take Notice Judicially *what Day of the Month Term begins*, and that the Cauſe of Action accru'd after the Declaration deliver'd, which was generally as of Eaſter Term, and ſuch Declaration refers to the firſt of the Term, if there be no ſpecial Memorandum. 12 Mod. 647. Hill. 13 W. 3. Thompſon v. Southwell.

33. It is a *Privilege* due *to the Clerks of C. B. not to be ſued in any other Court, except for Treaſon or Felony*, than in C. B. without their Conſent; and per Holt Ch. J. this Privileges is due to them of Common Right, of which B. R. will take Notice, but that otherwiſe perhaps it might be of the Clerks of the Exchequer. 2 Lord Raym. Rep. 869. Paſch. 2 Ann. B. R. Ogle v. Norcliffe.

34. B. R. will, upon a *Writ of Error*, take Judicial Notice of all *Private Cuſtoms in Private Places*, for they below are as much bound to proceed upon their Cuſtoms, as the Judges here are upon the Common Law. Per Holt Ch. J. 11 Mod. 68. pl. 2. Hill. 4 Ann. B. R. Anon.

(C) Of what things the Court ought to *take Conuſance*, *without Averment* thereof.

1. **If a Man be** indicted, that he killed a Serjeant of London in the Execution of the King's Proceſs, 18th Day of November between the Hours of 5 and 6; **though in truth, this Time being in November,** is part of the Night, **yet the Court is not bound, ex Officio, to take notice thereof, no more than in the Caſe of Burglary, without theſe Words, in nocte ejusdem diei, or noctanter. Co.** 9. Mackalley 66. **reſolved.**

2. **In an Indictment** of Burglary, **the Court is not bound to take Notice that it was done in the Night,** (though the Time alledg'd ought to be in the Night,) **without the Words Nocte ejusdem diei, or noctanter. Co.** 9 Mackalley 66. **b.**

3. **If upon a pleading it appears to the Court, that a** Proclamation of a Fine **levied** upon the Statute of the 4 H. 7. was **made** Termino Trinitatis 7 Junii, **&c. though this 7th Day of June was Dies Dominicus, and ſo not Dies Juridicus, yet the Court will not take notice** that it was Dies Dominicus, **without an expreſs Averment thereof. D.** 2. **El.** 182. 52. 55. *Fiſh and Broket.* **Com.** 265. **the ſame Caſe.**

4. **If upon the pleading of a Fine it appears to the Court, that** one of the Proclamations was **made** Termino Paſchæ 31 Junii, **when there is not, nor never was ſo many Days in this Month, the Court will take notice of this without any Averment;** For it is impoſſible. **D.** 2. 182. 52. 55. *Fiſh and Broket.* **Com.** 265.

5. **If upon pleading a Fine appears to the Court, that** one of the Proclamations was **made the** 25 Junii Termino Paſchæ, **where** all June was out of the Term, **yet the Court ſhall not take notice thereof, without Averment, as by Averment, that the Feaſt [Term] of Eaſter commenced the ſame Year the** 1 **Mail, & finivit ultimo Mail. D.** 2. **El.** 182. 52. **Com.** 266. **b.** *Fiſh and Broket* **averred there.**

A Mandamus was teſted the 4 July which was our and therefore the Court taking Notice that that Day was after the End of the Term, quaſh'd the Writ; and ſays that ſo it was done in the Caſe of a Capias, by which the Marſhall here was freed of a Debt Sid. 304 pl. 11. Mich. 18 Car. 2 B. R. Sterlings Caſe. ——2 Keb. 91. pl. 9. S. C.——Sid. 308. pl 18 the ſame Term in Caſe of Champion v. Skipwith, the Court doubted if they ought to take Notice of the Day of the Month of the Beginning and End of the Terms of Trin. and Eaſter which were Moveable.

6. **In an Action upon the** Caſe, **if the Plaintiff** declares, **that** in Conſideration of 20 l. **the** Defendant aſſumed to deliver **to the Plaintiff** 20 Cumbos tritici, **which he had not delivered; though it is** not averred **by an Anglice** what Combus is, **yet the Court ought to take notice thereof, it being the** Phraſe of the Country **of Norfolk and Suffolk, and other Places, and there well known. (*) Mich.** 11 **Ja. B. R. between** *Cock and Thoroughgood*, **per Curiam my Reports.** 11 **Ja.**

* Fol. 525

So where a Covenant was to pay Primage, Average and Petit Lodinage Exception was taken, becauſe the Plaintiff did not expreſly aver in his Declaration what the Words meant; becauſe they are Termini incogniti; but per Doderidge and Jones, it is according to the Covenant and good. Palm. 398. Paſch. 21 Jac. B. R. in Caſe of Conſtable v Cloberie ——Words are to be taken according to the Intent of the Parties, and this Intention and Conſtruction of Words ſhall be taken according to the Vulgar and uſual Senſe, Phraſe, and manner of Speech of theſe Words, and of that Place where the Words are ſpoken as in the Caſe of *Alga Maris* and *Main-ſworn* inſtead of Forſworn

For ſo on Bulſt. 175, 176 Trin. 9 Jac in Caſe of Hewet v. Painter.——As to Actions brought for ſcandalous Words not well known to the Judges, in what Caſes the ſame ſhall be good without an Averment and where an Averment ſhall help it. See tit. Actions for Words (L. b.)

If an Action is brought for Words of Slander, according to the Phraſe of the Country where they are ſpoken; though the Court does not know what they ſignify, yet an Action lies without an Averment of their Signification. For the Judges themſelves ought to take Notice of Engliſh Words ſpoke in any Country. Roll tit. Actions for Words (L. b.) pl. 1. cites it as adjudg'd Mich. 14 Jac.

7. In an Action upon the Caſe, if the Plaintiff declares that the Defendant ſold to him quaſdam Carucas ſignatas, Anglice Car-rooms, and that the Defendant promiſed firmam facere prædictas Carucas ſignatas, Anglice Car-rooms; though it is not averred what is intended by the Word Car-rooms, nor what it ſignifies, yet the Declaration is good; For it is a Phraſe in London well known, of which the Court ought to take Notice, this being a Phraſe of the Country. Tr. 21 Ja. B. R. Rot. 1416. entred. By Car-rooms is intended a Mark which the Lord Mayor puts upon a Cart.

Br. Error pl. 134. cites S. C. —— So if it be Curia tenta Die Jovis in feſto Sancti Andreæ, and the Feaſt was the Friday this Year, it is Error for which the Judgment was reverſed. Ibid ——So where Error was aſſigned that the Judgment was given at a Court held at Lynn, 16 February, 16 Eliz. and this Day was Sunday, and ſo found by Examination of the Almanacks of that Year, it was ruled ſufficient and that a Trial per Pais was not Neceſſary, though it was Error in facto, and the Judgment was reverſed. Cro. E 227 pl. 12. Paſch. 33 Eliz. B. R. Page v Faucet.—— Le. 243. pl. 328. S. C. accordingly, though the Error was aſſign'd at the Bar only; And Caſes were cited that the Juſtices might judicially take Notice of Almanacks, and be informed by them.

8. In a Writ of Error upon a Judgment in an inferior Court, if an Error be aſſigned, that the Record is quod quædam Curia tenta fuit die Mercurii, Viz. 3 Martii, &c. where Monday was the third Day and not Wedneſday, this is Error, of which the Court is to take Notice. 1 H. 7. 12. b. adjudged.

Br. Error, pl. 69. cites S. C. —— Br. Jour, pl. 27. cites S. C —— Fitzh. Error, pl. 17. cites S. C.

9. In a Writ of Error upon an Indictment of Treſpaſs, ſuppoſing the Treſpaſs to be done Die Jovis prox' poſt Diem Pentecoſtes, if it be aſſigned for Error that Dies Pentecoſtes is every Day of the Week, ſo that it is uncertain whether he intends Diem Jovis in the ſame Week, or next Week, yet the Court ought to take Conuſance of the Feaſt, ſcilicet, that Pentecoſte dicitur a Pente, quod eſt quinque, & Coſte, quod eſt decem, & hoc eſt quinquies decem Dies poſt Paſcham, and this Day is Dies Dominicus, the firſt Day of Pentecoſt, and ſo over-ruled the Error without more Proof. 7 H. 6. 39. adjudged. Com. 122. b.

And the Defendant was compelled to anſwer notwithſtanding his Exception. Br. Count, pl. 13. cites S. C. —— Fitzh. Count, pl. 31. cites S. C. —— Br. Expoſition, pl. 20. cites S. C. and if he was his Bailiff or Receiver till the Feaſt of another St. Michael, the Defendant might plead it. —— Br. Jours, pl. 5. cites S. C.

10. In Account, if the Plaintiff declares, that the Defendant was his Bailiff &c. in ſuch a Day in ſuch a Year &c. till the Feaſt of St. Michael &c. though in the Declaration it is not St. Michael the Archangel, or St. Michael in Monte Tumba, yet the Court ſhall intend it to be St. Michael the Archangel, becauſe this is the moſt famous St. Michael, and therefore the Declaration is certain enough. 20 H. 6. 23. adjudged.

Br. Jour, pl. 5 cites S. C. & S. P —— Fitzh. Count, pl. 31 cites S. C. & S. P.

11. But if he had declared from ſuch a Day &c. till the Feaſt of the Bleſſed Virgin Mary, this had not been good, becauſe it is uncertain what Feaſt he intends, there being two. 20 H. 6. 23. per Newton.

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12. **In a Writ of** Error to reverſe an Outlawry, **if it appears that the** Exigent was returnable at the Utas of the Holy Trinity, and **that the** fifth County was held the 11th of July, **though** in Truth the Utas of Trinity was the 10th of July, **and ſo the Return of the Writ before the fifth County was held, yet the Court ſhall not take Conuſance thereof without Averment. 21 H. 6. 13. an Averment there made.**

Fitzh. Error, pl. 32. cites 31 H. 6. 13. S. P. [and s Roll ſeem miſprinted (21) for (31.) —— Br. Proceſs, pl. 176. cites no fol. 6. in 31 H. 6. 13. —— Br. Jours, pl 84. cites 31 H. 6. 6. [but it ſhould be (13) there being either of the Editions of that Year, but the fol. runs on from 30 H. 6. to 32 H. 6]

13. **If a Man** pleads a Thing **to be** done at **ſuch a Feaſt,** or before ſuch a Feaſt, **this is well enough without Averment of the** Month **when this Feaſt was. 15 H. 7. 2. b. admitted 20 H. 6. 23.**

Fitzh. Count. pl. 31. cites S. C. but S. P. does not exactly appear. —— Br. Count, pl. 13. cites S. C. but S. P. does not fully appear.

14. **If in** Treſpaſs **the Defendant** juſtifies for an Amercement in the Sheriff's Turn, which **by the Statute of the** 31 E. 3. **[cap. 15.]** is to be held infra Menſem poſt Feſtum Paſchæ & Michaelis, **and the Defendant ſays the Plaintiff was amerced at a** Court held the 18th of April infra Menſem Paſchæ, **and does** not ſay infra Menſem poſt Feſtum Paſchæ, **and therefore adjudged not to be a good Plea; for that though it appears by the Almanack that the 18th of April was infra Menſem after the Feaſt of Eaſter, yet the Court is not bound to take Notice thereof without an Averment thereof, nor to inſpect an Almanack for it; but (*) it was ſaid by Juſtice Jones, that they are bound to take Notice of** immoveable **Feaſts, and** not of moveable **Feaſts, as this is. Mich. 8 Car. B. R. between *Griffin and Bedle* adjudged upon Demurrer. Intratur Hill. 5 Rot. 43.**

Cro. C. 275. pl. 13. S. C. adjudged —— Jo. 300. pl. 3. S. C. and per Cur. the Court is not bound to take Notice of moveable, but only of immoveable Feaſts; and Judgment for the Plaintiff.

* Fol. 526.

15. If a *Woman brings an Appeal upon the Death of her Brother*, and the Defendant admits it without Challenge or Exception, yet the Court ought to abate the Appeal. 2 Le. 162. per Wray, cites 10 H. 4. 7.

3 Le. 93. in pl. 133. S. P. & S. C. cited per Wray. —— So if ſhe brings Appeal of the Death of her Father; per Cur. Palm. 311. Mich. 20 Jac. B. R.

16. The Court ex Officio abated a Writ againſt an Hoſtler, becauſe he *was not named a common Hoſtler* in the Declaration. Br. Office del &c. pl. 12. cites 11 H. 4. 45.

Br. Office del &c. pl. 22. (bis) cites S. C. though the Plaintiff admitted the Writ and Count. —— S. C. cited by Rhodes J. and agreed by Periam J. and cited 11 Gouldsb. 106. in pl. 11. ——— 2 Le. 162. in pl. 196. and 3 Le. 92. 133. S. P. by Wray, H. 4. and 38 H. 6. 42.

17. The Court ex Officio is not bound *to take Conuſance of the Error in Writ of Error*, but the Party ſhall aſſign it. See 24 E. 3. 34. if the Party aſſigns Errors, though they are not Errors, the Court Ex Officio *ſhall ſee if there are any other which by the Parties are not touch'd* &c. and alſo to ſee the Record, if there is any Matter to affirm &c. Quod Nota. Br. Office del &c. pl. 9. cites 20 H. 6. 18. 28 H. 6. 11.

If to an Action brought the Defendant pleads in Bar by Deed, and does not ſhew the Deed, and the other pleads in Bar, and does not except thereunto, but they were at Iſſue, this is Error; For the Court Ex Officio ought to have adjudged it ill. Gouldsb. 106, 107. in pl. 11. per Rhodes J. ſays ſo is the Book of 22 H. 6. or 28 H. 6. and that he can ſhew the Caſe.

Br. Superſedeas, pl. 30. cites S. C.

18. Where an Indictment is inſufficient, or *Exigent awarded where it does not lie*, there the Juſtices upon Information ſhall *award Superſedeas Ex Officio.* Br. Office del &c. pl. 8. cites 5 E. 4. 7.

3 Le. 92. pl. 133. Mich. 26 Eliz. B. R. the S. C. in totidem Verbis.

19. In a *Formedon* of a Manor the *Tenant pleaded Jointenancy by Fine with J. S.* The *Demandant averred the Tenant ſole Tenant as the Writ ſuppoſed, and found for the Demandant.* It was aſſigned for Error, that where, upon Jointenancy pleaded by Fine, the Writ ought to abate without any Averment by the Demandant againſt it, the Averment has been received againſt the Law &c. Though the Tenant hath admitted and accepted this Averment, viz. ſole Tenant, as the Writ ſuppoſes, yet Wray held, that the Court ſhould abate the Writ without Exception of the Party. 2 Le. 161, 162. pl. 196. 21 Eliz. C. B. Anon.

Goldsb. 106. pl. 11. S. C. adjudged accordingly. —— If Action of Debt be brought againſt an Executor on a ſimple Contract of the Teſtator, and he pleads to it, and does not demur upon the Declaration, Judgment ſhall be given againſt him, and the Court Ex Officio will not abate the Writ without Challenge of the Party. Yelv. 56. Mich. 2 Jac. B. R. in Caſe of Fiſh v. Richardſon, cites 10 H. 6. —— Where it appears to the Court that the Writ ought to abate, there the Court Ex Officio ought to abate it, though the Party admits it by Pleading in Bar; Per Cur. Roll Rep. 176. pl. 13. Paſch. 13 Jac. B. R. Anon.

20. Though the *Defendant by his Plea admitted that the Action lay againſt him*, yet when *the Matter at the Beginning is not ſufficient to charge him*, as where the Defendant was *charged as Adminiſtrator on a ſimple Contract*, the Court Ex Officio ought to abate the Writ without Exception of the Party, and the Defendant's Plea takes not away the Authority of the Court, but they may abate the Writ at any Time after. Reſolved per tot. Cur. Cro. E. 121. pl. 12. Mich. 30 & 31 Eliz. B. R. Hughſon v. Webb.

Wilde J. held, that the Court is bound to take Notice of the Beginning of Terms; but by Twiſden J. the Court cannot take Notice of the Days of Terms, or at leaſt it is in their Diſcretion, and cited the Principal Caſe of Biſhop v. Harcourt. 3 Keb. 397. pl. 98. Mich. 26 Car. 2. B. R. in Caſe of Alderton v. Miller.

21. *Aſſumpſit to deliver an Indenture ante finem Termini Sanctæ Trin' tunc proxim' ſequent'.* The *Promiſe was 5 Junii.* The *Plaintiff alleged, that Trinity Term incepit 7 Die Junii, & finivit 26 Junii.* Anderſon held, that the *Eſſoin Day is the firſt Day of the Term, which was 3 Junii*, and then the Indenture was not to be delivered till Trinity Term was a Twelvemonth; but the 3 other Juſtices contra, for the Plaintiff has expreſsly alleged that the Term began the 7th of June, and the Defendant had not denied it, and the *Court Ex Officio are not to ſearch the Rolls of the Court*, and although in Law the Eſſoign Day is the firſt Day of the Term, yet in common Speech, that is the firſt Day of the Term when the Court ſits; and Anderſon, againſt his own Opinion, gave Judgment for the Plaintiff. Cro. E. 210. pl. 6. Mich. 32 & 33 Eliz. B. R. Biſhop v. Harcourt.

22. Though in Judgment of Law every Judgment relates to the firſt Day of the Term, yet where the Plaintiff in his *Declaration expreſsly ſets forth an Award in Eaſter Term in & ſuper 20 Maii, that the Defendant impoſterum ſhould ſurceaſe ſuch Suit* &c. *and that the Defendant after the 20 Maii proſecuted the Suit to Judgment*, though it appears to be all in one Term, yet the Defendant ſhould have demurr'd to it, becauſe it is *ſpecially laid down in Time the one to be after the other, and* having taken *Iſſue upon the Point* of the Action, viz. Non Aſſumpſit, the other Matter alleged in the Declaration is only collateral and Inducement, and now the *Court cannot judicially take Notice of it without reſorting to* the other Record, viz. *the Record of the Judgment*, which they ought not to do, becauſe the Plaintiff has preciſely alleged it to be after 20 May in Time. Yelv. 35. Paſch. 1 Jac. B. R. Huys v. Wright.

23. If Tenant brings *Treſpaſs Vi & Armis againſt his Lord*, the Court ought to abate the Writ Ex Officio; But when it is abateable by *collateral Matter of Fact De-hors*, of which they cannot take Notice as Judges,

Judges, it is otherwiſe, unleſs it be pleaded; Per Cur. obiter. Palm. 511. Mich. 12 Jac. B. R.

24. In Aſſumpſit the Plaintiff *declared, that Defendant being indebted to him* in 15 l. *in Conſideration the Plaintiff would give him Time for Payment thereof until the firſt Day of Eaſter Term, promiſed to pay &c.* It was aſſigned for Error, becauſe it was *not ſhewn when Eaſter Term began*; ſed non allocatur; for it is well known to the Court, and the Action is conceived after the End of the Term. Cro. J. 548. pl. 8. Mich. 17 Jac. B. R. Auſtin v. Bewley.

Jenk. 330, 331. pl. 61. S. C. the Judges Ex Officio ought to take Notice of Eaſter Term, and other Terms. Affirmed in Error.

25. *Writ of Inquiry* of Damages was awarded *returnable Die Lunæ poſt quinden. Hillarii* primo Caroli, and the *Sheriff returned the Inquiſition taken before him 27 Die Januarii*, which was *after the Day of the Return of the Writ*, and ſo without Authority; But foraſmuch as it was *not aſſigned upon the Record*, although in Truth it were ſo, the Court would not take Conuſance thereof; and it may be that Die Lunæ poſt quinden' Hillarii was the 28 or 29 Day of January, and then the Inquiſition is well taken, and ſo it ſhall be intended; and if not, the Court ſhall not take Notice thereof unleſs it had been aſſigned; whereupon the Judgment was affirmed. Cro. C. 53. pl. 11. Mich. 2 Car. in Cam. Scacc. Morris v. Fletcher.

26. The Court is bound ex Officio to take Notice of all *Matters which do appear upon the Record* depending before them, *but of Matters debors*, viz. *To ſearch the Almanack for Days, and to compute Times* mentioned in the Record, they are not bound ex Officio to do it. 2 P. R. 234. cites 21 Car. B. R. 14 Car. B. R.

27. *Submiſſion to an Award was Ita quod it be made before Eaſter next enſuing.* In Debt on the Bond the Defendant *pleaded that Nullum fecerunt Arbitrium ante Feſtum Paſchæ.* Plaintiff *replied, that before Eaſter viz. 15th of April following the Arbitrators awarded*, &c. After Trial Exception was taken to the *Verdict*, becauſe it *did not find that the Award was made before Eaſter*, and the Court cannot take Notice ex Officio, that the 13th of April was before Eaſter; but it was anſwer'd, that the Replication alleged it to be before Eaſter viz. 15th of April, and that the Defendant in his *Rejoinder had omitted the Words (Ante Feſtum Paſchæ) ſo that the Time was not in Iſſue.* And upon this Reaſon Mr. Hales told the Reporter that the Court reſted for that Point; For he held that the Court otherwiſe could not take Notice of the Time Ex officio, tho' Mr. Weſton ſaid, that the Opinion of Roll was, that they might if they pleaſed. All. 85. 87. Mich. 24 Car. B. R. Kinaſton v. Jones.

Sty. 97. S. C. Roll J. ſaid, it is a Queſtion whether the Court is bound to take Notice of the Almanack, and the Feaſt Days there ſet down or no.

28. The Court is not obliged to take Notice of the *Day of the Month, upon which the moveable Terms is.* Lev. 196. Mich. 18 Car. 2. B. R. Courtney v. Philps.

Sid. 300. pl. 6. S. C. and S P. *but when* the Day of the Month is *alledg'd in the Record* the Court may take Notice of it, and the Day of the Return ſhall be tried by Almanacks; Arg. Quod fuit conceſſum per Curiam.

(D) In

(D) In what Caſes the Court ought to take Notice of the *Eccleſiaſtical Law.*

1. IF Adminiſtration be granted to B. of the Goods of A. durante Minore ætate of C. and it appears in Pleading, that C. is of the Age of 16 [* 17] the Court ought to take Notice of the Eccleſiaſtical Law, that the Adminiſtration is void, and determined. Mich. 14 Car. B. R. between *Damporte and Pincent*, per Jones, Croke and Berkley, but Brampſton e contra.

* Cro. C. 516. pl. 16. Davenport v. Penſel S. C. Curia adviſare vult.—— 5 Rep. 29. a. Hill. 40 Eliz. C. B. Piggot's Caſe. S. P.——Cro. E. 602. pl. 14. Pigott v. Gaſcoigne S. C.

Inaſmuch as the Conuſance of the Right of Marriages belong to the Eccleſiaſtical Court, and the ſame Court has given Sentence in ſuch Caſe, the Judges of our Law ought (tho' it is contrary to the Reaſon of our Law) to give Faith and Credit to their Proceedings and Sentences, and to think that the Proceedings are conſonant to the Law of Holy Church; For Cuilibet in Arte ſua perito eſt credendum; and ſo have the Judges of our Law always done, as appears in 34 H. 6. 14. b. 11 H. 7. 9. a. b. 4 Rep. 29. a. pl. 18. Mich. 27 & 28 Eliz. Per Cur. in Caſe of Bunting v. Lepingwell——S. P. reſolv'd. 5 Rep. 7. a. Hill. 33 Eliz. Cawdry's Caſe.——2 Vent. 43. Per Archer J. S P. and cites 4 Rep. 29. ——7 Rep. 42. b. S. P. Per Cur. in Kenn's Caſe.—— Jenk. 289. pl. 26. S. C. and S. P.

2. The Judges of the Common Law ſhall take Conuſance *what is the Law of the Church or of the Admiralty* &c. and *not to take it as the Biſhop pleads it, nor to write to Certify it*, per Moyle and Priſot, and yet the Laws are different; For they Judge that where a Man and a Woman make a Contract of Matrimony, that immediately the Man may take the Goods of the Woman, contra by our Law; and that he who is born and begot before the Eſpouſals is *Mulier*, if the Father and Mother intermarry afterwards, contra to our Law, and yet if they certify ſuch Mulier our Law ſhall take it as a good Certificate, there Caveatur and *ſhall aid it by ſpecial Pleading* &c. Br. Quare Impedit. pl. 12. cites 33 H. 6. 12. 32. 34 H. 6. 11. 38. and 35 H. 6. 18.

3. A *Parſon and* a *Vicar* were *at Iſſue for Tithes*, and did not take Advantage of the *Juriſdiction*, yet when the Court perceived it they diſmiſt the Matter ex Officio; For it is a ſpiritual Cauſe. Br. Office del &c. pl. 17. cites 22 E. 4. 23.

4. The Court ought to take Notice of, and give Credit and Faith to the *Proceedings and Sentences* in the Spiritual Court, and to think that their Proceedings are conſonant to the Law of Holy Church; For *Cuilibet in ſua arte perito eſt credendum*; tho' what they do there be againſt the Reaſon of our Law. 4 Rep. 29. a. pl. 18. Mich. 27 & 28 Eliz. the firſt Reſolution in Bunting's Caſe.

7 Rep. (42. b.) 42. b. Mich. 4 Jac. in the Court of Wards in Kenne's Caſe, S. P. ——Mo. 169. pl. 303. S. C.

5. When a *Biſhop refuſes a Clerk* preſented to him, he *ought to aſſign the Cauſe in certain*, becauſe tho' the King's Court cannot properly determine Schiſms Hereſies, yet the original Cauſe of Suit being Matter whereof the King's Court hath Cognizance, the Caſe may be alleged that the Court may conſult with Divines, or if the Party be dead, direct a Jury to try it. 5 Rep. 57. b. 58. a. Hill. 32 Eliz. B. R. in Specot's Caſe.

(E) What

(E) What Things the Court may do. [Refuse to give Judgment. In what Cases.]

1. IF upon Examination the Court finds, that the Tenant in a Formedon hath confeſſed the Action of the Demandant, where the Demandant had before brought ſuch Writ againſt another, where the Parol was put without Day by Nonage, ſo that there appears an apparent Deceit; the Court may refuſe to give Judgment thereupon. 39 Ed. 3. 35. Br. Judgment pl. 48. cites S. C.— See Tit. Judgment (E. 2)

In what Caſes the Court may *vacate a Judgment*, See Tit. Vacat per totum.

(F) What Things ſhall be *incident* to a Court.

See Tit. Conuſance of Pleas (E)

1. IF the King grants a Court by Letters-Patents to a Corporation of a Town, to hold Pleas, &c. in this Caſe, though there is not any Clauſe in the Patent to make a Bailiff or Serjeant to execute the Proceſs of the Court, and to return Juries, &c. yet it is incident to their Grant to do it, for otherwiſe they cannot hold a Court. Mich. 14 Car. B. R. in *Metcalfe and Worſely's* Caſe, per Curiam agreed.

2. But upon ſuch Grant of a Court, if there be not any Clauſe in the Patent to make a Bailiff to execute Writs of Enquiry of Damages, if a Judgement is given by which a Writ of Enquiry of Damages is to be granted, this ought to be returnable in Court, and there the Enquiry ought to be made, for the Bailiff cannot execute it, inaſmuch as he cannot execute it without giving an Oath to the Jury and Witneſſes, which the Letters do not give him Power to do; for this is not neceſſarily implied in the Grant of the Court, inaſmuch as it may be done in Court. Mich. 14 Car. B. R. between *Metcalf and Worſely*, per Curiam, in a Writ of Error out of an inferiour Court, and the firſt Judgment reverſed accordingly. See Roll Tit. Error (I. c) pl. 5. S. C.

3. When a *new Court is erected* it is neceſſary that *the Authority and Juriſdiction* of the Court *ſhould be declared*; For ſuch a new Court can have no other Juriſdiction than is expreſſed in the Erection; For a new Court cannot preſcribe. 4 Inſt. 200. 213.

4. It is incident to every Court created by Letters Patents or Act of Parliament and other Courts of Record, *to impriſon for any Miſdeameanor done in Contempt* or diſturbance *of the Court*, but where there is only a Power granted as to impoſe Fines and Amercements, that ought to be purſued. But in caſe where ſuch a *Power of impriſoning* is *given implicite* by the Law, *a Perſon cannot be committed to Priſon without Bail or Mainpriſe* until he ſhall be delivered by the Parties who committed him. 8 Rep. 119. b. Hill. 7 Jac. in Bonham's Caſe.

(G) At what *Time* the Court ought to be *held*.

1. IF the King grants a Court to be held die Jovis every Week, it may be held in one Week, and be thence adjourned for two Weeks after, leaving a Week mean. Mich. 4 Jac. B. R. between Coa and Clerk.

2. But it would be otherwiſe, if the Words in the Patent ſhould be, Et non aliter, vel alio modo. Tr. 4 Jac. B. R. between Coa and Clerk.

Fol. 527.

3. Hill. 4 Ed. 1. B. Rot. 29. Comes Glouceſtrıæ calumniat quod ſecundum Legem & Conſuetudinem Regni nullus jurare debet in Aſſiſa poſt Clauſum Alleluya.

Br. Court Baron &c. pl. 17. cites S. C. ——

4 If a Leet hath been held at a certain Day, and this is changed, and held at another Day, this is void. 38 H. 6. 7.

Fitzh. Leet. pl. 2. cites S. C.

Br. Court Baron &c. pl. 17. cites S. C. ——

5. But if a Court-Baron hath been held at a certain Day, this may be held at another Day. 38 H. 6, 7.

Fitzh. Leet. pl. 2. cites S. C.

* This is in Affirmance of the Common Law and Cuſtom of the Realm

6. 9 *H.* 3. *cap.* 35. Enacts that * *No County ſhall be held but from Month to Month*; † *and where a greater Term has been uſed it ſhall be greater.*

2 Inſt. 70. —— The Word (County) is taken in the Common Senſe for the County Court. 2 Inſt. 70.

† This is *altered by* the Statute of 2 *E.* 6 [*cap.* 25.] whereby it is provided that *no County ſhall be longer deferr'd, but one Month from Court to Court*, and ſo the ſaid Court ſhall be kept every Month and no otherwiſe; And there is to be accounted 28 Days to the legal Month in this Caſe, and not according to the Month in the Calender. 2 Inſt. 71.

But now by the Statute 31 *E.* 3. *Stat.* 1. *cap.* 15. enacts that

7. *Nor ſhall any Sheriff or his Bailiff make his Tourn by the Hundred, but twice in a Year in the due and cuſtomed Place, to wit once after Eaſter and once after Michaelmas*;

*every Sheriff ſhall make his Tourn once in the Month after Eaſter, and the other Time in the Month after St. Michael; and if they hold them otherwiſe, they ſhall * loſe their Tourn for the Time.*

Lord Coke ſays, that this Statute of 31 E. 3. explains this Part of the Statute of 9 H. 3. cap. 35. and that the Words ſhall loſe their Tourn for the Time is as much as to ſay as the Court ſo holden for that Time ſhall be utterly void, and the Sheriff ſhall loſe the Profits thereof. 2 Inſt. 71.

This Clauſe extends to the Enquiry of Felonies, common Nuſances, and other

8. *And the View of Frank-pledge ſhall then be made ſo that every one have his Franchiſes. And the View of Frank-pledge ſhall be made ſo, viz. that the King's Peace be kept, and the Tithing kept intire uſed to be, and that the Sheriff be content with ſo much as he was wont to have for his View-making in the Time of K. H. our Great Grandfather.*

Miſdeeds, the View of Frank-pledges and to all Things inquirable in the Tourn. Now by this Clauſe it is provided that the Article of the Tourn concerning the View of Frank-pledge, being here underſtood in particular Senſe, ſhall be dealt withal by the Sheriff in his Tourn but once in the Year, viz. at the Tourn holden after Eaſter and ſo it has been formerly expounded; and therefore it was well reſolved in 24 H. 8. that this Clauſe of the Statute of Magna Charta, is to be underſtood of the Leets of the Tourn, and not of other Leets, and ſo without Queſtion is the Law holden at this Day, that he that claims a Leet by Charter, muſt hold it at the ſame Days which are contained in the Charter, and he that claims it by Preſcription may claim to hold it once or twice every Year, at any ſuch Days as ſhall upon reaſonable Warning be appointed, if the Uſage had been ſo, ſo that it has been kept at uncertain Times, or elſe it ought to be kept at ſuch certain Days and Times, as by Preſcription hath

hath been certainly uſed; And the next Words to this Clauſe be, Ita ſcilicet quod quilibet habeat Libertates ſuas, quas habuit &c. do explain the Meaning of this Chapter, that it extended not to the Leets of the Subjects, but they ſhould have their Liberties as before they had; And this alſo appears by the Concluſion of this Chapter, Et quod Vicecomes &c. contentus ſit de eo quod Vicecomes habere conſuevit de viſu ſuo faciendo; ſo as it muſt be Viſus ſuus, the Sheriffs View, which of Neceſſity muſt be Parcel of the Tourn, and it is ſaid in the Mirror that this View of Frank-pledge (Parcel of the Tourn) ſhould be made once every Year. 2 Inſt. 72.

It ſeems certain, that ſince theſe Statutes, the Sheriff is indictable for holding this Court at another Time than what is therein limited, or at any unuſual Place. Alſo it has been reſolved, that an Indictment found at the Sheriff's Tourn, appearing to have been holden at another Time is void; But it is obſervable, that neither of theſe Statutes do expreſsly mention a Court Leet, and therefore it is ſaid in ſome Books, that they do not extend to it, neither do I find any Reſolution, that an ancient Court Leet holden at any other Time, or at an unuſual Place, is void; But on the Contrary it is ſaid, that a Court Leet may be be holden at any Place within the Precinct which the Lord thinks fitting, and it ſeems to be agreed, that a Preſcription to hold ſuch Court oftner than twice in the Year is good, which ſeems hardly reconcileable with the general Rule of Law, that no Preſcription can ſtand good againſt a Statute which has Negative Words, if a Court Leet be conſtrued to be within the Purview of the abovementioned Statutes. It is true, indeed, that both Sir Edw. Coke and Kitchen endeavour to ſolve this Difficulty, by offering a Diſtinction that the ſaid Rule extends not to Statutes made in Affirmance of the Common Law, but it is queſtionable how far this will amount to a good Anſwer, ſince it ſeems to be holden by others of good Authority, that the ſaid Statutes were not made in Affirmance of the old Law, but are Introductory of a new one; yet it is certainly ſafeſt to hold a Court Leet at the Times accuſtomed, for it is ſaid, if it be holden at an unuſual Time, it is void; And it ſeems that no Court Leet granted ſince the Statute, can be holden at any other Time than what is limited by it, becauſe every ſuch Court is derived out of the Tourn, to which the Statute certainly did extend. 2 Hawk. Pl. C. 56. Cap. 10. S. 6, 7, 8.

9. A Leet cannot be held at any other Time, but *only within a Month after Eaſter and Michaelmas, unleſs* that it is *by Patent or ſpecial Preſcription.* 2 Saund. 291. Hill. 22 & 23 Car. 2. at the End of Dakins's Caſe, ſays, Vide Stat. Magna Charta, cap. 35. 31 E. 2. cap. 15. Tit. Leete 32.

10. One enters *a Plaint in a baſe Court to purſue in the Nature of a Writ of Entry in the Poſt, and had Summons* againſt the Party *until ſuch a Day,* at which Time, and *after Sun-ſet, the Steward came and held the Court,* and the Summons was return'd ſerv'd, and the Party made Default, and Judgment given; the Queſtion was, if the Judgment was good. Dyer, Welch, and Benlowes held the Judgment good, altho' the Court was held at Night; and Dyer ſaid, that if it were erroneous, he could have no Remedy by Writ of falſe Judgment nor otherwiſe, but only by way of Petition to the Lord, and he ought in ſuch Caſe to do right according to Conſcience, for he hath Power as a * Chancellor within his own Court. Owen. 63. Mich. 6 Eliz. Anon.

Mo. 68. pl. 185. S. C. in totidem Verbis.—— Dal. 70 pl. 41. S. C. in totidem Verbis.

* S. P. per Cur. Le. 2. pl. 2. Hill. 25 Eliz. B. R.

11. A Man may preſcribe to *hold* a Leet *oftner, and* * *at other Times* than are mentioned in the Statute of Magna Charta. Cap. 11. [35] For it is in the Affirmative; Per all the Juſtices. Cro. E. 125. pl. 4. Hill. 31 Eliz. B. R. Patridge's Caſe.

2 Le. 28, 29. pl. 31. The Queen v. Partridge S. C. & S. P. held by all

the Juſtices.—— S. P. as to a Leet by Preſcription, per Cur. cites 20 H. 7. 22. & 18 H. 6. 11. but where a Leet is by Grant it was held a good Exception, that the Defendant did not ſhew that the Court was within a Month after Eaſter, but only ſaid that it was held the 23 Apr. Cro. E. 245. pl. 3. Mich. 33 & 34 Eliz. B. R. Porter v. Gray.——Ibid. 300. pl. 15. Paſch. 34 Eliz. B. R. the S. C. but a D. P. ——Per Brian; By Magna Charta cap. 35. Leet ſhall be held but only once in a Year, viz. at Mich. only. But by Anno 24 H. 8. this is intended of the Leet of the Tourn of the Sheriff, and not of other Leets. Br. Leet. pl. 23. cites 8 H. 7. 1.——Roll Rep. 201. pl 3. Arg. cites 8 H. 7 [1] that the Reporter there ſeems of Opinion that a Leet is within a Statute; But Coke Ch. J. ſaid, that if this ſhould be ſo, it would overthrow all the Leets in England, and that the ſaid Statute is of Tourns, but a Leet may be held by Preſcription at any Time of the Year; And Doderidge ſeemed to be of the ſame Opinion. Trin. 13 Jac. B. R.

The Difference is between a *Leet by Grant* or *by Preſcription*; In the firſt it muſt be ſhewn to be held within the Time limited by the Statute, but in the laſt Caſe it is otherwiſe. Cro. E. 245. Porter v. Gray. —— But where in an Indictment it was laid to be *held at F. the Sixteenth Day of September,* (without ſaying within a Month of Eaſter or Michaelmas) yet it was held good. 11 Mod. 227. Queen v. Jennings. —— and cites the Caſe of the King v. King.

* The one may preſcribe to hold a Court Leet at other Times than mention'd in Magna Charta; But

But unleſs *that Preſcription appears* it ſhall not be preſum'd; Per Cur. 11 Mod. Trin. 8 Ann. B. R. 228. Queen v. Jennings.

12. It was aſſign'd for Error to reverſe an Outlawry, that a County *Court was held* 23 *Feb.* and that *the next* County Court *was held* 23 *March following*, ſo that there were not 28 Days between thoſe two County Courts, and this was held erroneous; But Tanfield ſaid, that this ought to be aſſign'd as an Error in fait; For it might be Leap-Year, and then it is good, and that Matter iſſuable. Cro. J. 167. pl. 7. Trin. B. R. Leech's Caſe.

(H) In what *Places* the Court may be held.

1. A Court Baron **ought to be held** upon ſome Part of the Manor, **for if it be held out of the Manor it is void.** Co. Lit. 58.

2. But **if the** Lord, **being** ſeiſed of two or three Manors, hath uſually Time out of Mind, held Court Barons at one of the Manors for all **the Manors; then by the Cuſtom ſuch Courts are well held, though they be not held within the ſeveral Manors. Co. Lit.** 58.

3. A cuſtomary Copyhold Court cannot **be held** out of the Manor. **Co.** 4 **between** *Melwich and Luter*, 26. **reſolved. Co.** 4. 27. **between** *Clifton and Molineux* **reſolved, that the Steward cannot make Grants and Admittances at any Court held out of the Manor.**

4. *Leet* may be held *at any Place within the Hundred*; Contra of Court Baron; Per Brian. Br. Leet pl. 23. cites 8 H. 7. 1.

5. Leet may be held *in any Place within the Precinct* where the Lord ſhall pleaſe. Br. Court Baron pl. 8. cites 8. H. 7. 3. Per Brian.

6. Law Day may be *in Auters terres*. D. 30. b. pl. 209.

(I) *What* ſhall be ſaid of Courts *of Record*.

The Court of Admiralty is *no Court of Record*, Br. Error. pl. 177. per Brooke, who ſays it ſeems ſo; *becauſe* it is *held by the Civil Law*.——13 Rep. 53. S. P. and for the ſame Reaſon and cites Br. Error. pl. 77. accordingly [but it is miſprinted for 177]——4 Inſt. 135. Cap. 22. S. P.——Noy. 24. per Warburton S. P.

1. **The Court of** Admiralty **is not any Court of Record, and therefore no Recognizance can be taken there. Tr.** 8 **Jac. B. ſaid to be adjudged.**

2. **The** Engliſh Court of Chancery **proceeding upon a Subpæna, and by way of Decree, is no Court of Record.** 37 H. 6. 14. b. **per Priſot.**

2 Inſt. 380. S. P.—4 Inſt. 263.

3. **The** County Court **is no Court of Record. Co. Litt.** 117. b.

Cap. 54. and 266. Cap. 55. S. P.——And though a Plea be holden therein by a Juſticies (the King's Writ) yet it is no Court of Record; For of a Judgment therein a Writ of falſe Judgment lies, and not a Writ of Error. 2 Inſt. 140.——6 Rep. 11. b. S. P. in Jentleman's Caſe.—Co. Litt. 117 b.

4. The

4. The Hundred Court **is no Court of Record. Co. Litt.** 117. b. 2 Inſt 143. S. P.——4 Inſt. 263.

Cap. 54. S. P.——Ibid. 267. Cap. 56. S. P.——Co. Litt. 117. b.

5. A Court Baron **is no Court of Record. Co. Litt.** 117. b. 2 Inſt 143. S. P. —— 4 Inſt. 263.

Cap. 54. and ibid. 268. Cap. 57. S. P.——Co. Litt. 117. b. S. P.

6. The Leets and *Tourns are Courts of Record, and have Authority to aſſeſs Fines.* Br. Leet, pl. 39. cites F. N. B. 82. That is, the Leets and Tourns

which are for the publick Weale, as for keeping the Peace, theſe are Courts of Record, and conſequently for keeping the Peace the *Sheriff is Judge of Record and may take Recognizance for the keeping the Peace Ex Officio ; But yet all the Pleas holden before him in the County are not of Record, nor Pleas held before him in the County by Writ of Juſticies* are not taken as Matters of Record ; For theſe Pleas are held before him by reaſon of the Courts, which he has by reaſon of his Office, as the County Courts and Hundred &c. F. N. B. 82.

7. Wherever there is a Juriſdiction erected with *Power to fine and impriſon* that is a Court of Record, and what is there done is matter of Record. 1 Salk. 200. pl. 1. Trin. 12 W. 3. B. R. Groenvelt v. Burwell. Where there is a Power erected de Novo by Parliament

to convict, and fine, and impriſon either of theſe 2 make it a Court of Record. 12 Mod. 388. per Holt Ch. J. who delivered the Judgment of the Court, in Caſe of Grenville v. College of Phyſicians. S. C.——Carth. 494 S. C. & S. P. by Holt Ch. J.

(I. 2) What ſhall be done in Caſes where the Court is divided.

1. IN B. R. and C. B. and the Exchequer, or in the Exchequer Chamber where all the Juſtices are aſſembled, if the Juſtices are equally divided *no Judgment ſhall be given.* 12 Rep. 117. in Sir Stephen Proctor's Caſe.

2. And ſo it is in the Court of *Parliament.* 12 Rep. 117. in Sir Stephen Proctor's Caſe.

3. It is the Uſage of *C. B.* when the Judges are *of* 3 *Opinions*, to give the Rule according to the Opinion of the 2 which agree. 2 Vent. 24. Trin. 22 Car. 2. C. B. Rudyard's Caſe.

4. In a *Motion in Arreſt of Judgment* if the Court had been divided on the firſt Motion, the Plaintiff might have entred his Judgment, but where there is a former Rule to ſtay Judgment, this Rule muſt ſtand or be diſcharged, and diſcharg'd it can't be becauſe the Court is equally divided. Per Cur. 1 Salk. 17. pl. 7. Trin. 11 W. 3. B. R. Iveſon v. Moor. Ld. Raym. Rep. 486. 495. S. C. & S. P. but becauſe after the former Motion it cannot be entred without Continuances, there muſt be a Rule for Judgment which cannot now be had, the Court being divided.——12 Mod. 62. 267. S. C. & S. P. that here was an Adviſare vult Indefinitely, and ſo Judgment cannot be enred without Continuances, and while the Court is divided it continues an Adviſare vult. If the Rule had been Temporary and expired the Matter had been at large.——6 Mod. Trin. 203. 3 Ann. B. R. Walmſley v Ruſſel S. P. and cites S. C.—But if it had been *upon Demurrer or ſpecial Verdict*, then it would be adjour'd to the Exchequer Chamber.——3 Mod. 153. Hill. 3 Jac. B. R. The Counteſs of Plymouth v. Throgmorton.

5. At Niſi prius *Plaintiff had a Verdict*, and *on a Motion for a new Trial the Court were divided in Opinion* ; And no Rule being made, Plaintiff was at Liberty to ſign final Judgment. Barnes's Notes in C. B. 322. Hill. 10 Geo. 2. Cartlidge v. Eyles.

(K) The Court of *Conſtable* and *Marſhal.*

Of the Office of Marſhal and Juriſdiction of the Court of Marſhalſea. See tit. Marſhal and Marſhalſea.

1. RDT. Parl. 22 Ed. 3. numero 4. Fifteenths granted upon divers Conditions to be entered in the Rolls of Parliament, ſcilicet among others, that there be no Mareſchalſey in England, except the Mareſchalſey of the King, and of the Guardian of England, when the King ſhall be out of England.

* This ſhould be 2 H. 4. No. 76. according to Pryne's Abr. of Cotton's Records 411.

2. * H. 4. numero 79. the Commons pray againſt the Court of the Conſtable and Marſhall; but no Aſſent thereto, ſimile ibid. numero 99. for holding Pleas of Matters triable by the Juſtices according to the Common Law; but no Aſſent thereto. And the anſwer was, that the Statutes therefore provided ſhall be obſerved. But Ibid. No. 99. is a D. P. but it ſeems it ſhould be No. 89.

3. 8 *Rich.* 2. *cap.* 5. *Pleas which touch the Common Law, and ought to be diſcuſſed by the Common Law, ſhall not be drawn or held before the Conſtable and Marſhal.*

* This is to be underſtood in any foreign Part beyond the Seas, in Partibus exteris & tranſmarinis; for upon the Sea the Admiral has Juriſdiction, which Admiral (our Engliſh Neptune) cannot meddle with any thing done beyond the Seas upon the Land, and the Conſtable and Marſhal ſhall have no Conuſance of any Thing done upon the Sea. 4 Inſt. 124.

4. 13 *R.* 2. *cap.* 2. *To the Conſtable it appertaineth to have Cognizance of Contracts touching Deeds of Arms and War * out of the Realm, and alſo of Things that touch War within the Realm, which cannot be determined nor diſcuſſed by the Common Law, with other Uſages and Cuſtoms to the ſame Matters pertaining, which other Conſtables heretofore have duly and reaſonably uſed in their Time; and that every Plaintiff ſhall declare plainly his Matter in his Petition before that any Man be ſent for to anſwer thereunto. And if any will complain that any Plea be commenced before the Conſtable and Marſhal, that might be tried by the Common Law of the Land, the ſame Plaintiff ſhall have a Privy Seal of the King without Difficulty, directed to the ſaid Conſtable and Marſhal, to ſucceaſe in that Plea until it be diſcuſſed by the King's Council, if that Matter ought of Right to pertain to that Court, or otherwiſe to be tried by the Common Law of the Realm of England, and alſo that they ſurceaſe in the mean time.*

They proceed according to the Cuſtoms and Uſages of that Court, and in Caſes omitted according to the Civil Law, Secundum Legem Armorum; and therefore *upon Attainders* before the Conſtable and Marſhal for the Time being, *no Land is forfeited or Corruption of Blood* wrought 4 Inſt. 125. cap 17.

5. 1 *Hen.* 4. *cap.* 14. *All the Appeals to be made of Things done out of the Realm, ſhall be tried and determined before the Conſtable and Marſhal of England for the Time being.*

Conſideration upon the Statute 1 H. 4. cap. 14. was had, how the Word Appeals ſhall be intended before the Conſtable and Marſhal. And 22 Eliz. Doughtie's Caſe, Petition was made to the Queen by the Heir to make a Conſtable and Marſhal, but ſhe would not. Admitting that the King grants a Commiſſion of the Office of a Conſtable and Marſhal, whether the King may have any Remedy before them by Indictment, or Information by the Attorney General? Hut. 3. Anon. [But it is there left a Quære.]——See pl. 9.

6. *At the Requeſt of the Commons the King granted, that one* Bennet William, *who was impriſoned to anſwer before the Conſtable and Marſhal* of England, *ſhould be tried according to the Common Laws of the Realm, notwithſtanding any Commiſſion to the contrary*; and thereupon a *Writ* was accor-

accordingly directed to the Juſtices of the King's Bench, as may appear Prynn's Abr. of Cotton's Records, 429. 5 H. 4. pl. 39.

7. If *two Engliſhmen* do *go into a foreign Kingdom, and fight there*, and the *one murders the other*, Lex Terræ extends not hereunto, but this Offence ſhall be heard and determined before the Conſtable and Marſhal, and ſuch Proceedings ſhall be there by attaching of the Body, and otherwiſe, as the Law and Cuſtom of the Court have been allowed by the Laws of the Realm. 2 Inſt. 51. cites 13 H. 4, 5. 3 Inſt. 48. S. P. and cites S. C. and Stanf. Pl. C. 65 Mich. 25 & 26 Eliz. Dowtie's Caſe.

8. Appeal of Treaſon *lies not at Common Law*, *but* it lies *before the Conſtable and Marſhal*, and there it ſhall be determined by the *Civil Law*. Br. Treſpaſs, pl. 197. cites 37 H. 6. 2, 3.

9. If a *Subject* of the King be *killed by another of his Subjects out of England*, in any foreign Country, the *Wife, or he that is Heir of the Dead, may have an Appeal for this Murder* or Homicide before the Conſtable and the Marſhal, whoſe Sentence is upon Teſtimony of Witneſſes or Combat. And accordingly, where a Subject of the King was ſlain in Scotland by other of the King's Subjects, the Wife of the Dead had her Appeal therefore before the Marſhal and Conſtable. And ſo it was reſolved in the Reign of Q. Eliz. in **Caſe of Sir Francis Drake**, who ſtruck off the Head of D. in Partibus Tranſmarinis that his Brother and Heir might have an Appeal, ſed Regina noluit conſtituere Conſtabularium Angliæ &c. & ideo dormivit Appellum. Co. Litt. 74. a.

10. *Matters done out of the Realm* of England, *concerning War, Combat, or Deeds of Arms*, ſhall be tried and determined before the Conſtable and Marſhal of England, before whom the Trial is by Witneſſes, or by Combat, and their *Proceeding is according to the Civil Law*, and not by the Oath of 12 Men. Co. Litt. 261. a.

11. The Court of the Conſtable and Marſhal *have Conuſance of Contracts*, of *Deeds of Arms*, and of *War out of the Realm*, and alſo of *Things touching War within the Realm, which may not be determined or* diſcuſſed *by the Common Law*, and alſo *all Appeals of Offences done out of the Realm*, and they proceed according to the Civil Law. Co. Litt. 391. b.

12. If A. gives B. a *mortal Wound in a foreign Country*, and B. *comes into England and dies*, this cannot be tried by the Common Law, becauſe the Stroke was given there, whence no Viſne can come, but the ſame ſhall be heard and determined before the Conſtable and Marſhal. 3 Inſt. 48. cap. 7.

13. If a Man be *ſtricken upon the High Sea, and dies* of the ſame Stroke *upon the Land*, this cannot be enquired of by the Common Law, becauſe no Viſne can come from the Place where the Stroke was given, (though it were within the Sea pertaining to the Realm of England, and within the Liegeance of the King) becauſe it is not within any of the Counties of the Realm; neither can the Admiral hear or determine this Murder, becauſe though the Stroke was within his Juriſdiction, yet the Death was Infra Corpus Comitatus, whereof he cannot enquire; neither is it within the Statute 28 H. 8. becauſe the Murder was committed on the Sea, but by the ſaid Act of 13 R. 2. the Conſtable and Marſhal may hear and determine the ſame. 3 Inſt. 48. cap. 7.

14. *The Judges* of this Court *are the Lord High Conſtable of England, and the Earl Marſhal* of England, and this Court is the Fountain of the Marſhal Law; and the Earl Marſhal is both one of the Judges and to ſee Execution done. 4 Inſt. 123. cap. 17.

15 This

15. This Court of Chivalry was anciently holden in the King's Hall. 4 Inſt. 123. cap. 17.

16. *Neither the Statute* 26 *H.* 8. *cap.* 13. *nor that of* 35 *H.* 8. *cap.* 2. *nor the Statute of* 5 *E.* 6. *cap.* 11. *do take away the Juriſdiction* of the Conſtable and Marſhal where one accuſes another *of High Treaſon done out of the Realm*, for of ſuch an Accuſation of one againſt another of any High Treaſon done out of the Realm, the Conſtable and Marſhal ſhould have Conuſance thereof, becauſe High Treaſon is not triable by a Jury according to the Courſe of the Common Laws of the Realm in that Caſe for want of Proof. 4 Inſt. 124. cap. 17.

For more as to the Court of Chivalry before the Conſtable and Marſhal, See 4 Inſt. 123. to 130. and Prynn's Animadverſions &c. on 4 Inſt. 59 to 74 &c.

(K. 2) The Court of Honour.

1. IN a Caſe where the Earl Marſhal was a Lunatick, it was held, that a Court of Honour, *touching Arms and Honour*, may be holden before the Earl Marſhal only, or Commiſſioners deputed to exerciſe that Office; But Matters relating *to Life and Member* muſt be kept before the Conſtable and Marſhal. 1 Lev. 230. Hill. 19 & 20 Car. 2. B. R. Parker's Caſe.

Sid. 352. pl. 3. the King v. Parker, S. C. held accordingly by all the Juſtices, præter Twiſden J. who thought that ſuch Commiſſioners are illegal and grievous, as appears by the Petition of Right, viz. Stat. 3 Car. cap. 1. —— S. C. cited Show. Rep. 353. —— 2 Hawk. Pl. C. 14. cap. 4. S. 13. cites S. C. and ſays, it ſeems to be the better Opinion of the Court, that during the Lunacy of an Earl Marſhal, it may well be holden before Commiſſioners deputed to exerciſe his Office; and it ſeems hard to ſay that ſuch Commiſſioners, founded on the plain Neceſſity of the Caſe, and intended to prevent a Failure of Juſtice, as to Caſes of which no oher Court has Conuſance, are againſt the Purview of the Petition of Right made in the 3d Year of the Reign of King Car. 1. which complaining that Commiſſions had been granted for the Trial of certain capital Offences, and other Outrages, by the Martial Law, under Pretence thereof divers of the King's Subjects had been put to Death, prays that from thenceforth no Comuiſſions of like Nature might iſſue forth to be executed as aforeſaid.

2. The Court of Honour *cannot commit for Painting of Arms*, becauſe that is a Trade, which a Perſon educated in it, may lawfully uſe; but though they may do for ordinary Uſes, yet, unleſs they are Herald-Painters, they cannot do it for great Solemnities or Funerals without Licence, much leſs may they order the *Ceremonies of Funerals* without Licence, but this *ought to be directed by the Heralds*, As for all Noblemen by Garter King of Arms, for all Gentlemen on this Side Trent by Clarencieux, and beyond Trent by Norroy; Reſolved. Lev. 230. Hill. 19 & 20 Car. 2. Parker's Caſe.

Show. Rep. 353 Ruſſel v. Oldiſh, S. C. and Holt Ch. J. ſaid, this Matter deſerves Debate; for if theſe Things do belong to their reſpec-

3. A Libel was in the Court of Honour, ſetting forth, that there are three Kings at Arms, Garter, Clarencieux, and Norroy, and ſix Heralds, skilful in Deſcents, Pedigrees, and Arms, to whoſe Offices it belongs to marſhal Funerals &c. and that the Defendant had encroached upon their reſpective Offices, by *Painting Arms*, *Marſhaling Funerals &c.* The Defendant for a Prohibition ſuggeſted the Statute of Magna Charta, that no Man ſhall be diſſeiſed of his Liberties, or free Cuſtoms, but by Judgment of his Peers &c. It was inſiſted againſt the Prohibition, that a Court of Honour is an ancient Court by Preſcription, and

that

that being a Court of great Antiquity, they have endeavoured to extend its Juriſdiction, but have been reſtrained by ſeveral Acts of Parliament, and that the Statute 13 R. 2. cap. 2. declares the Earl Marſhal's Authority, and gives Remedy if abuſed, but not by way of Prohibition by the Courts of Law, but by a Privy Seal from the King, directed to the Earl Marſhal, not to proceed; Sed per Cur. if what is ſet forth in the Libel is true, it ir a Wrong done to the Poſſeſſions of the Heralds, for which they might have an Action, but here is no Manner of Complaint of any Thing done againſt the Rules of Honour, therefore a *Prohibition* was granted, becauſe this Matter cannot be otherwiſe determined. 4 Mod. 128. Trin. 4 W. & M. in B. R. Ruſſell's Caſe.

tive Offices, then there is an Action at Law for the Wrong, and therefore directed a Prohibition, and the Plaintiff to declare &c.

4. Concerning the *Conſtitution of* the Court of Honour, no doubt it was formerly *held before the Conſtable and Marſhal*, and ſo all along till 13 H. 8. when the then Conſtable was attainted of Treaſon, and its being held before the *Marſhal alone* is no ancienter than the Court of the *Council of York*, which obtained by Encroachment only; For firſt it was but a Commiſſion of *Oyer and Terminer*, yet it after drew in Abundance of other Matter, and all by the great Power of the Preſident of the North; Per Holt. And he ſaid, He never knew what ſort of *Juriſdiction* a Court of Honour has as to *Matters ariſing within England*, for the *Statute of* 13 *R.* 2. gives them Authority only of Matters ariſing out of the Realm, and Feats of Arms within the Realm, by which they would have meant Coats of Arms and Eſcutcheons. And he ſaid, The Miniſters of that Court underſtood this Matter of Arms well, and gave Coats of Arms, and kept Pedigrees of Families, and if they find People that *aſſume Arms*, to whom Arms do not belong, or at leaſt thoſe they aſſume belong not to them, their way is to Poſt them up, but by what Juſtice or Law he could not tell. It cannot impriſon, for it is no Court of Record. He ſaid, It were to be wiſhed the Parliament would give them Juriſdiction of *Words* tending to diſparage Men of Honour, and ſuch as generally provoke Gentlemen to fight. And per Cur. They have no Pretence to hold Plea of Words. 7 Mod. 127. Hill. 1 Ann. B. R. per Holt Ch. J. in Caſe of Chambers v. Jennings.

5. The Court of Honour has not *Juriſdiction of Words* tending to the Breach of the Peace. 7 Mod. 125. 128. Hill. 1 Ann. B. R. Chambers v. Jennings.

No Precedent being to be found of ſuch a Suit for Words in the Court of Honour, a Prohibition was granted. 2 Salk. 553 pl. 18. S. C.

The Court of Admiralty.

Fol. 528.

See 4th Inſt. 134. cap. 22. and ſee Prynn's Animadverſions &c. 75 to 134

1. HORNE Mirror de Juſtices 2. b. Among the Conſtitutions of King Alfred, one is, That the Sovereignty of all the Land to the Middle of the Sea about the Land belongs to the King in Right of his Crown.

2. Maſter Selden told me, there was a Record in Turri Londinenſi in 34 E. 1. that it was agreed by all the Princes of the Chriſtian

World, that the Narrow Sea, and the Sea which is about England, belongs to, and is within the Juriſdiction of the King of England.

3. 34 Ed. 1. Rot. pat. Membrana 21. an Admiral made of Dover verſus Partes Occidentales uſque Scotiam, and another Admiral of the Thames verſus Partes Boreales uſque Barwick.

4. Rot. Scotiæ 4 E. 2. M. 5. Sciatis quod aſſignavimus &c. J. E. Admirallum & Capitaneum Flotæ noſtræ Navium &c.

5. Rot. Scotiæ 7 E. 2. M. 7. de Capitaneo & Admiralio Flotæ Regis Navium Occidentalium conſtituto.

6. Rot. Scotiæ 8 E. 2. Membrana 2. Willielmus de Gray Capitaneus & Admirallus Flotæ Regis verſus Partes Occidentales Angliæ. Ibidem. In another Place another Admiral.

7. 2 H. 4. Rot. Parl. Numero 9. the Commons pray againſt the Court of the Admiralty for holding Plea of Matters triable before Juſtices, according to the Common Law. But no Aſſent to this.

See Prynn's Animadverſions &c. on 4 Inſt. So the ſame Petition at large, and the King's Anſwer.

8. 4 H. 4. Numero 47. In a Petition by the Commons againſt the Admiral, among other Things, it is prayed, that the Admirals uſe their Laws only by the Law of Oleron, and the ancient Laws of the Sea, and by the Law of England, and not by Cuſtom, or by other Manner. Vide the Anſwer.

9. 4 H. 4. numero 63. another Petition, that the Admiral hold his Courts upon the Sea, or upon the Sea Coaſts, and not within a Franchiſe or Vill; and that Suits commenced be determined before Adjournment to another Place. But no aſſent to this.

(A) Of what *Things* they may hold Plea, *in reſpect of the Place where* they ariſe.

1. 2 H. 5. cap. 16. [6] IT is enacted, That the Conſervator of the Truce and Safe Conducts by the King aſsigned, ſhall have Power to enquire of Offences done againſt the Truce and ſafe Conduct of the King upon the high Seas, out of the Body of Counties, and out of the Franchiſes of the Cinque Ports, as the Admirals of the Kings of England before this Time reaſonably after the old Cuſtoms, and late upon the main Sea uſed, have done or uſed; and ſo to make Proceſs, Judgment, Execution &c.

* Hob. 18. pl. 103. S. C. † Hob. 79. pl. 104. Mich. 9. Jac. C. B. the S. C.

2. The Court of Admiralty cannot hold Plea of any Contract made upon the Land beyond Sea, but only of Things done upon the Sea. Hobert's Reports 107. between the * *Spaniſh* Ambaſſador and Sir *Richard Bingley* a Prohibition granted; and 109. between † *Palmer and Pope* a Prohibition granted.

Fo. 529.

Hob 79 pl. 104 and ibid 212 pl. 270. S. C and S. P. reſolv'd and a Prohibition granted; But if it had been a Writing only without Seal, it had made no Change as to the Juriſdiction; If the Contract was at Land tho' the Breach was at Sea, yet becauſe theſe two muſt concur to make the Cauſe of Suit, which is entire, the Party ſhall be forced to ſue in the King's Court, becauſe that and the Common Law muſt prevail againſt other Courts and Laws, and cited 48 E. 3. 2. 10 H. 7. F. N. B. 118.

3. [But] If a Contract be made upon the Sea, but it is afterwards ſealed upon Land, the Court of Admiralty cannot hold Plea thereof. Hobart's Reports between *Palmer and Pope.*

4. 27 *H.* 8. *cap.* 4. *Pyracies, Murders, and Robberies, done upon the Seas or in any Haven, River, or Creek, where the Admiral pretends to have Juriſdiction, ſhall be inquir'd and tried &c. in ſuch Shires and Places of the Realm as ſhall be limited by the King's Commiſſion, as if done at Land and ſuch Commiſſions under the great Seal ſhall be directed to the Admiral, his Lieutenant, or Deputy, and three or four other ſubſtantial Perſons as the Lord Chancellor ſhall name, to hear and determine ſuch Offences, according to the Courſe of the Common Law us'd for Felony done within the Realm.* A Murder at Sea was anciently Cognizable ouly by the Civil Law, but now by force of 27 H. 8. 4. and 28 H. 8. 15. it may be tried and determined before the King's Commiſſioners in any County of England, according to the Courſe of the Common Law; yet the Killing of one who dies at Land of a Wound received at Sea, is neither determinable at Common Law nor by force of either of theſe Statutes; but it ſeems, that it may be tried by the Conſtable and Marſhal, or before Commiſſioners appointed, in purſuance of the Statute of 33 H. 8. 23 Hawk. Pl. C. 79. cap. 31. S. 12.

5. 28 *H.* 8. *cap.* 15. *S.* 1. *All Treaſons, Felonies, Robberies, Murders, and Confederacies, committed upon the Sea, or in any Haven, River, Creek, or Place where the Admirals pretend to have Power or Juriſdiction, ſhall be inquir'd heard, and determin'd, in ſuch Shires and Places of this Realm, as ſhall be limited by the King's Commiſſioner &c. after the common Courſe of Law us'd for Treaſons, Felonies, Robberies, Murders, and Confederacies of the ſame committed upon Land within this Realm.* This Statute as to criminal Offences upon Sea, is to be intended if Felony be done Super altum Mare. For if it be committed in a Creek or Place where the Admiral has not Juriſdiction, the Commiſſioners have nothing to do to meddle with it; Per Coke and Foſter Ow. 123. Mich. 7 Jac in Caſe of Leigh v. Burley.

A Pirate upon his Arraignment before Commiſſioners of Oyer and Terminer, ſtood mute and would not directly anſwer. Saunders Ch. B and Brown and Dyer J. being ask'd their Opinion, held, that he ſhould have the Pain of Fort and Dure; And this by the good and reaſonable Intendment of the Statute of 28 H. 8. cap. 15, and Judgment was given accordingly.——3 Inſt 114. S. P. but ſays, it is out of the latter Words of the Act viz. "And ſuch as ſhall be convict of any "ſuch Offence by Verdict, Confeſſion or Proceſs." For he that ſtandeth mute is not convict of the Offence, but ſuffereth for his Contumacy, and it is neither by Verdict, Confeſſion, or Proceſs.

The *Commiſſion for Trial* of Piracy by Statute 28 H. 8. cap. 15 is *good, tho' the Chancellor does not appoint the Commiſſioners as that Statute appoints*; Per Hobart Ch. J. Arg. Hob. 146.——D. 211. b. 212. a. Paſch. 4 Eliz. S. P. where the Nomination was by the Lord Keeper, and held good by the greater Number; and this was before the Statute 5 Eliz. cap. 48.

As to *Criminal Offences*, the *Statute* 28 *H.* 8. *cap.* 15. extends only to ſuch which are done Super altum Mare, for if they are done in a Creek or Place where the Admiral has not Juriſdiction, the Commiſſioners have nothing to do to meddle with it; Per Foſter. Ow. 123. Mich. 7 Jac. in Caſe of Leigh v. Burley.

If an *Engliſhman commits Piracy*, be it *upon the Subject of any Prince or Republick in amity with the Crown of England*, they are within the purview of the Statute of 28 H. 8. and ſo it was held where one **Winterſon**, Smith and others, had robbed a Ship of one Maturine Gantier, belonging to Bourdeaux, and bound from thence with French Wines for England, and that the ſame was Felony by the Law Marine, and the Parties were convicted of the ſame. Molloy 60. cap 4. S. 8

So it is *if the Subject of any other Nation* or Kingdom, being *in Amity with the King of England, commits Piracy on the Ships or Goods of the Engliſh*, the ſame is Felony, and puniſhable by Virtue of the Statute, and ſo it was adjudged, where one **Careleſs**, Captain of a French Man of War of about 40 Tuns, and divers others, ſetting upon four Merchant Men going from the Port of Briſtol to Carmarthen, did rob them of about 1000*l.* for which he and the reſt were arraigned and found Guilty of the Piracy. Molloy 60. cap. 4. S. 9.

But before the Statute of 25 *Ed.* 3. *if the ſubjects of a Foreign Nation and ſome Engliſh had joined together and* had *committed Piracy, it had been Treaſon in the Engliſh, and Felony in the Foreigners*; And ſo it was ſaid by Shard, where a Norman being Commander of a Ship, had, together with ſome Engliſh, committed Roberies on the Sea, being taken, were arraigned and found Guilty; the Norman of Felony, and the Engliſh of Treaſon, who accordingly were drawn and Hanged. *But now* at this Day *they both receive Judgment as Felons by the Laws Marine.* Ibid.

6. A Commiſſion iſſued out of Chancery according to the Statute of 28 H. 8. 15. to the Admiral and others, to inquire hear and determine all Treaſons, Felonies &c. done within the Juriſdiction of the Admiralty, and they iſſued out a Precept againſt Lacy, for having *given a mortal Stroke to J. S. upon Scarborough Sands*, (being a certain Place *in which the Sea has Flux and Reflux,)* of which Stroke J. S. died at Scarborough, whereupon L. was arreſted and impriſoned, and arraign-

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ed thereof before the Commiſſioners, all which L. pleaded to a Sci. fa. on a Recognizance, entered into by him to appear before the Juſtices of Aſſiſe at York, which he was prevented doing by his being ſo taken into Cuſtody. The Attorney General demurred to the Plea, and one Cauſe alleged was, that L. did not allege that the Coroners who inquired Super Viſum Corporis were Coroners of the Admiralty or of the County; but this was held not Material; becauſe the Commiſſioners may proceed without any View of the Body by any Coroner. Mo. 121. pl. 265. Paſch. 25 Eliz. in the Exchequer, Lacy's Caſe

Le. 270. pl. 363 S. C. is that Lacy was indicted for the *Death of a Man upon Scarborough Sands, between High and Low Water-Mark*,

7. L. *gave P. a mortal Stroke upon the Sea, of which P. died at Scarborough* in the County of York, and *L. was diſcharged of it*; For thoſe of the County of York could not inquire of it without inquiring of the Stroke, and of the Stroke they could not inquire becauſe it was not given within any County; And thoſe of the Admiralty Juriſdiction cannot inquire of it as of a Felony without inquiring of the Death, and of the Death they cannot inquire, becauſe it was Intra. Corpus Comitatus, cited 2 Rep. 93. a. per Cur. as adjudg'd in B. R. Trin. 25 Eliz. Lacy's Caſe.

which being remov'd into B. R. and the Defendant arraigned, he *pleaded that the Indictment upon which he was arraigned was taken by Commiſſion* 1 *Mail, directed to the Judges of Aſſiſe*, and other Juſtices of Peace *in the ſaid County*, to inquire of all Murders &c. *and that afterwards, viz. on the* 2*d May iſſued another Commiſſion, directed to the Admiral, and others, upon the Statute* 28 H. 8. cap. 15. and this was *ad Inquirendum tam ſuper Altum Mare quam ſuper Littus Maris*; by force of which he was indicted of the ſame Murder. All the Juſtices held that the firſt Commiſſion was repealed by the ſecond, and ſo the Indictment upon which he was arraigned was Coram non Judice; for theſe two Commiſſions are in reſpect of two ſeveral Authorities, the firſt merely by the Common Law, the other by the ſaid Statute, and therefore the Party was diſcharg'd of the Indictment at the Suit of the Queen.

Mo. 121, 122. pl. 265. Paſch. 25 Eliz. in the Exchequer. S. C. —— and 86. pl. 150 S. C.

1. When the *Sea flows and is ad Plenitudinem*, the Admiral ſhall have Juriſdiction of every *Thing done upon the Water between the High Water-Mark and the Low Water-Mark, by the ordinary and natural Courſe of the Sea*; and ſo it was adjudg'd in **Lacy's Caſe**, that the Felony done upon the ad Plenitudinem Maris between the High Water-Mark and the Low Water-Mark by the ordinary and natural Courſe of the Sea, the Admiral ſhall have Juriſdiction; and ſo *between the High Water-Mark and the Low Water-Mark the Common Law and the Admiralty have Diviſum Imperium interchangeably.* 5 Rep. 107. a. Paſch. 43 Eliz. B. R. in Sir Hen. Conſtable's Caſe.

9. Cook ſaid, that the Admiral ſhould have no Juriſdiction *where a Man may ſee from one Side to the other*; but *the Coroner of the County ſhall enquire of Felonies committed there*; which was held to be good by all other Juſtices; And he gave this Difference, that where the *Place* was *cover'd over with Salt Water out of any County or Town*, there *eſt Altum Mare*; but where it is within any County, there it is not Altum Mare, but the Trial ſhall be per Vicinetum of the Town. Owen. 122, 123. Mich. 7. Jac. Leigh v. Burley.

10. Great Queſtion was, if *a Man committeth Piracy* upon the Sea, and *one knowing thereof, receiveth and comforteth the Defendant within the Body of the County*; if the Admiral and other the Commiſſioners, by Force of 28 H. 8. cap. 16. may proceed by Indictment and Conviction againſt the Receiver and Abettor, inaſmuch as the Offence of the Acceſſary hath the beginning within the Body of the County. And it was reſolved by them, that ſuch a Receiver and Abettor by the Common Law could not be Indicted or Convicted, becauſe the Common Law cannot take Conuzance of the original Offence, becauſe that is done out of the Juriſdiction of the Common Law; and by Conſequence, where the Common Law cannot puniſh the Principal, the ſame

ſhall

ſhall not puniſh any one as acceſſary to ſuch a Principal. 13 Rep. 53. pl. 21. Trin. 7 Jac. The Caſe of the Admiralty.

11. Where a Man may *ſee that which is done of one Part and the other of the Water &c.* in that Place the County may have Cognizance, and *it may be tried by a Jury*; which proves alſo, that that which may be tried by the Common Law, doth not belong to the Admiral's Juriſdiction. 12 Rep. 80 Hill. 8 Jac. cites 8 E 2. Corone 399, and ſays, that Stamford's Pleas of the Crown, lib. 1. fol. 51. citing this Book, ſays thus, viz. So this proves that by the Common Law before the Statute &c. the Admiral ſhall not have Juriſdiction upon the high Sea, which proves that the Admiral by the Common Law hath Juriſdiction upon the High Sea, and conſequently that his Juriſdiction was by the Common Law, and then it is ſo ancient, that the Commencement cannot be known; ſo that Ld. Coke ſays, he concludes that, that his Authority did not begin in the Reign of Ed. 3. as Lambert, upon uncertain Conjectures ſuppoſeth; for if the Juriſdiction had then began and been inſtituted, it would have appeared upon Record. 12 Rep. 80. Hill. 8 Jac. Anon.

12. The Admiralty of England *can hold no Plea of any Contract, but ſuch as ariſeth upon the Sea; No, tho' it riſes upon any Continent, Port or Haven in the World out of the King's Dominions*; for their Juriſdiction is limited by the Statutes to the Seas only; for the Admiral is for the Sea, and the Court for Maritime Cauſes, and therefore if any Stranger or other will ſeek Juſtice at the Hands of the King of England, for Wrongs done him out of his Dominions, he muſt ſeek it in thoſe Courts that have Juriſdiction over the Cauſe. Now, if the Cauſe riſe at Land or in a Port (for no Port is Part of the Sea, but of the Continent) then he cannot ſue in the Admiralty, but in the Courts of Common Law, which have unlimited Power in Cauſes Tranſitory, and then it muſt be ſo laid, that it may give Juriſdiction. Reſolv'd clearly by the whole Court. Hob. 79. pl. 103. D'acuna v. Jolliff and Bingley.

13. A Suit was in the Admiralty for *taking Goods circa Cape de Vert Super Altum Mare.* A Prohibition was moved for, becauſe it was *in the Port of Guinea when they were at Anchor*, and every Port is within the Body of the Land, and not upon the High Sea. Coke Ch. J. ſaid, that peradventure the Ports there are not as the Havens are here. Doderidge ſaid, that there is not any Port there, but there are Roads, but they are not within the Body of the Land but in the Sea, and they may be at Anchor in the Sea, and therefore a Prohibition was denied; But Coke ſaid, that if it had been within the Body of the Land the Admiral ought not not to hold Plea of it. Roll. Rep. 250. Mich. 13 Jac. B. R. Willet v. Newport.

14. A Libel was againſt B. for a *Ship lying at Anchor at Limehouſe.* The Libel was in Nature of a Detinue at Common Law, and becauſe this was infra Corpus Com' and not within the Admiral's Juriſdiction, a Prohibition was granted. Cro. J. 514. pl. 27. Mich 16 Jac. B. R. Violet v. Blague.

Mo. 891. pl. 1255. Anon. but S. C. and a Prohibition granted.—— 2 Roll. Rep. 49. Violett v. Blake. S C. and Prohibition granted; For by Doderidge Lyme Houſe, Hull &c. are within the Points of the Land, and out of the Juriſdiction of the Admiralty, and cited a Caſe in the Time of E 1. Avowry 192. and 46 E. 3. where Treſpaſs was brought for the taking a Ship at Hull, and the Mayor of Hull demanded Conuſance of the Plea and had it, and that the Book of 8 E 3. Corone 399 was denied by the Judges to be Law.

15. Plaintiff may ſue in the Admiral Court on a *Contract* if he will ſuppoſe it to be *made in Virginia, but* if he *ſuppoſes it to be made in England*, he may ſue here; But if *Part of the Contract* be *made here and Part over the Sea* in Virginia, *or upon the Sea*, the Common Law only ſhall have Juriſdiction; Per Jones J. who ſaid that theſe are the true Differences. 2 Roll Rep. 492, 492 Hill. 22 Jac. in Capp's Caſe.

16. 'Tis uſual in the Libel, to alledge ſome Contract to be made ſuper altum Mare ; But if the ſurmiſe be not true a Prohibition ſhall be granted. And Doderidge ſaid, if a *Ship lies at Anchor, and wants Victuals, and ſends to Land to J. S. to bring Victuals, and then the Contract is made in the Ship,* this is a Contract upon the Sea and therefore it ſhall be tried in the Admiralty, but contrary, if the Contract is made wholly at Land, and the Victuals afterwards ſent to the Ship. Latch. 11. Hill. 1 Car. Godfrey's Caſe.

17. A *Contract* was made *at Land, with ſeveral Seamen, to bring a Ship from a Port in England to London, for a certain Sum of Money to be paid to them.* Upon a Libel in the Admiralty for this Money, it was ſuggeſted for a Prohibition, that the Contract was made at Land, with with diverſe Jointly for a *Sum in Groſs*, and ſo could not be within the ordinary Rule of Mariners Wages to be ſued for in that Court, becauſe there they may all join, and not be put to the inconvenience of of ſuing ſeverally as at Law, but as this Contract is, they are to Sue jointly at Common Law ; But the Prohibition was denied for this muſt be taken as Mariners Wages, and therefore the Admiralty have Juriſdiction, though the Contract was at Land ; Beſides this Prohibition being pray'd after Sentence, 'tis Diſcretionary in the Court, to grant it or not. 1 Vent. 343. Mich. 31 Car. 2. B. R. Anon.

18. In a Prohibition to ſtay a Suit in the Admiralty for *Mariners Wages* ; the Suggeſtion was, that this ſuit was founded on a *Charter Party made at Land*, and not ſuper Altum Mare ; but the *Prohibition was denied*, becauſe Wages are not due to Mariners for Labour done at Sea, and the Charter and Contract made on the Land, is only to aſcertain them. 3 Lev. 60. Trin. 34 Car. 2. C. B. Coke v. Cretchet.

And North Ch. J. ſaid that ſuch was the Opinion of Hale Ch. J. in his Time on a Conference had between them at the Deſire of the Court of C. B. after the time that North was Ch. Juſtice of this Court; And the next Day was a like Caſe, and like Rule made between Middleton and Scolly.

19. Libel *by* two of the Mariners, viz. *Purſer and Boatſwain againſt two of the Owners* of the Ship, *for their Wages.* It was ſuggeſted for a Prohibition, *that the Contract was made at Land* ; And ſaid, that though Suits had been permitted for Mariners Wages, yet that was when they all joined in the Suit to avoid the putting them to ſue ſeverally, as they muſt do at Law ; But here the *Suit was by 2 only, and againſt* 2, and therefore they ought not to have the Privilege of Common Seamen, eſpecially ſince the Contract with the Owners is joint, and two only are ſued whereby they will be charged with the whole. But a Prohibition was not granted, for though the Plaintiffs were Purſer and Boatſwain, &c. yet they are Mariners ſtill, and may ſue in the Admiralty for Wages, and the proper Remedy is there ; but if they do not proceed according to their Law, the Remedy lies here. 2 Vent. 181. Trin. 2 W. & M. in C. B. Alleſon v. March.

Ibid. adds a Nota that it was ſaid by one of the Admiralty that tho' the Suit be againſt ſome of the Owners, the Courſe there is not to charge them with the whole, but only according to their proportionable Shares.

12 Mod. 38. Opy v. Addiſon S. C. on a Motion to diſcharge a Rule for a Prohibition, but the Rule was diſcharged. But a Note is there added, that this was ſaid to be otherwiſe by the Court upon a Motion in B. R. Mich. 4 Annæ in a Caſe between Barr and Barr, which was moved by Mountague.

20. A *Prohibition* ſhall not go to the Admiralty for *Mariners Wages*, though the Contract was made at Land ; and the Court held that for the Convenience of Seamen the Admiralty has always been allow'd to hold Plea thereof but with this Limitation that if there is any ſpecial Agreement, by which the Mariners are to receive their Wages, in any other manner than Uſual ; Or if the Agreement be under Seal, ſo as to be more than a parol Agreement, in ſuch a Caſe a Prohibition ſhall be granted, and ſo it was granted in this Caſe. 1 Salk. 31. pl. 1. Paſch. 5. W. & M. in B. R. Opie v. Child, & al'.

21. 11 & 12. *W.* 3. *cap.* 7. *All Piracy's, Felonies and Robberies, committed upon the Sea, or in any Haven, River, Creek or Place, where the Admirals have Power or Juriſdiction, may be inquired of, heard and determined, in any place at Sea, or upon Land, in any of his Majeſty's Dominions, Forts or Factories, to be appointed by the Kings Commiſſion under the Great Seal, or the Seal of the Admiralty, directed to any of the Admirals, Vice-Admirals, Rear-Admirals, Judges and Vice-Admiralty's or Commanders of any of his Majeſty's Ships of War, and alſo to any ſuch Perſons as his Majeſty ſhall appoint; which Commiſſioners ſhall have Power, by Warrant under the Hand and Seal of them, or any of them, to commit to Cuſtody any Perſon againſt whom information of Piracy, Robbery or Felony upon the Sea, ſhall be given upon Oath, and to call a Court of Admiralty on Shipboard, or upon Land, as Occaſion ſhall require; which Court ſhall conſiſt of 7 Perſons at leaſt.*——2. *If ſo many of the Perſons cannot conveniently be Aſſembled, any of 3 of them (whereof the Preſident or Chief of ſome Engliſh Factory, or the Governor, Lieutenant Governor, or Member of his Majeſty's Councils in any of the Plantations, or Commander of one of his Majeſty's Ships, is to be one) ſhall have Power to call any other Perſons on Shipboard, or upon the Land, to make up the Number of* 7.—— 3. *Provided that no Perſons but known Merchants, Factors or Planters, or Captains, Lieutenants, or Warrant-Officers, in any of his Majeſty's Ships of War, or Captains, Maſters or Mates of ſome Engliſh Ship, ſhall be able of Sitting and Voting in the ſaid Court.*

22. If the *Subjects in enmity* with the Crown of England, be *Sailors on Board an Engliſh Pyrate with other Engliſh*, and then *a Robbery is committed by them*, and afterwards are taken, it is Felony without controverſy in the Engliſh, but not in the Strangers; For they cannot be tried by Virtue of the Commiſſion upon the Statute, for it was no Piracy in them, but the Depridation of an Enemy, for which they ſhall receive a Trial by Martial Law, and Judgment accordingly. Molloy 60. cap. 4. S. 10.

23. If one ſteals Goods in one County, and brings them into another, the Party may be indicted in either County; But if one *commits Piracy at Sea*, and *brings the Goods into a County in England*, yet he cannot be indicted upon the Statute, for that the Original taking was not Felony, whereof the Common Law took Cognizance. Molloy 70. cap. 4. S. 30.

(B.) Of what *Things* they may hold Plea.

1. IF a Man makes an Agreement with another ſuper altum mare to carry Goods to Parts beyond the Sea, and after this Agreement is put in Writing, and ſealed in a Place beyond the Seas upon the Land, the Court of Admiralty ſhall not hold Plea upon this Agreement, for by the putting of this into a Deed, the Agreement is taken away, and the Juriſdiction changed thereby. Hobarts Reports 287. C. 268. between *Palmer and Cope.* Hob. Rep. 79. pl. 104. and 212 pl. 270. S C. & S. P.

2. But it had been otherwiſe, if the Agreement had been put in Writing without Sealing thereof. Hobart's Reports. 287. Hob 212. pl 270. S. C & S P.

3. If an Agreement be made upon Land to carry ſome Goods beyond Sea, and after the Goods by Negligence are damaged with Salt Water upon the High Seas, yet the Court of Admiralty cannot hold Plea of this; For though the Breach was upon the Sea, yet there ought to be another Act alſo to concur to make a Suit, ſcilicet the Contract, which Suit is intire, and therefore the Common Law ſhall prevail. Hobert's Reports 287. C. 268. between *Palmer and Cope.* Hob 79. pl. 104 & 212. pl 270. S. C. & S. P.

4. If

S. C cited Hob. 213. in pl. 270. Prohibition was granted, becauſe it appeared that the Agreement was made in the Iſland of Malaga.——S. C. cited Hob. 79, So in pl. 104. Mich. 9 Jac. C. B. in Caſe Palmer v. Pope.

4. If an Agreement be made in Malaga, or other Place beyond the Seas, the Court of Admiralty ſhall not hold Plea thereof. Hobarts Reports 287. between *Audely and Jennings* Caſe 269.

4 Inſt. 134. cap 22 S P. So as it is not Material whether the Place be Infra Fluxum & Refluxum Aquæ, but whether it be upon any Water within any County.

5. They cannot hold Plea of * Wreck, for this is expreſly prohibited by the † Statute, Mich. 15 Car. B. R. between the Lord Admiral and *Studſon*, per Curiam reſolved, and a Prohibition granted where it was ſuppoſed to be Flotſam; And the Plaintiff and Defendant there ſurmiſed it was Wreck, and thereupon a Prohibition granted.

* Nothing ſhall be ſaid Wreck, but ſuch Goods only as are caſt or left upon the Land by the Sea; Quæ Naufragio ad terram appelluntur. 5 Rep. 106. a.——It ſhall not be tried in the Admiral Court but before the King's Juſtices at the Common Law; becauſe the Wreck is ever caſt upon the Land. 2 Inſt. 168.

† Viz. by 15 R. 3. cap. 3. —— See (E. a) pl. 6. S. P.

* Hob. 212. pl. 269. Mich 9. Jac. S. C. —2 Brownl. 29. Sir John Watts's Caſe S. C. tho' the Goods were forfeited on the High Sea, and tho' Sir John Watts, who was the Vendee was not made a Party to the Suit, yet in as much as he bought them in Market Overt, and that by this Suit the Property will be drawn in Queſtion in the Admiralty, where it was proſecuted in the Name of the Spaniſh Ambaſſador, a Prohibition was granted ——S. C cited Hob. 79. pl. 104. that a Prohibition was granted; For the Property of Goods here at Land muſt be tried by Common Law, however the Property is guided.——See (E a) pl. 9. S. C

6. If a Subject of the King of Spain commits certain Crimes againſt his King, for which all his Goods are confiſcated, and after he comes into England with his Goods, and ſells them here to a Subject of our King; the Ambaſſador of the King of Spain cannot ſue in the Admiralty Court for the Goods againſt a Subject of our King; for though the Goods were confiſcated, yet now the property ſhall not be queſtioned but at Common Law. Hobart's Reports 286 * *Don Alphonſo* the Ambaſſador of the King of Spain v. *Cornero*; and the like between *Don Pedro* and another. Hill. 9 Jac.

Lat. 188. S. C. and it was Treſpaſs brought for breaking a Ship and carrying away the Sails, the Defendant juſtified by Warrant out of the Admiralty to arreſt the Ship, and in ſalvo cuſtodire by Force whereof he entred into the Ship and carried away the Sails, Quæ eſt eadem Tranſgreſſio. It was objected that the breaking the Ship is not anſwered, and that the Warrant does not give him any Authority to carry any Thing away. But the Court held the Plea good enough, becauſe the entring into the Ship is a breaking of it in Law, as a Clauſum Fregit &c. and likewiſe he may carry away the Sails, that being the Manner of their Proceedings and grounded upon Reaſon, becauſe he cannot in ſalvo cuſtodire unleſs the Sails are carried away.——— Godb 385. to 390. pl. 474 S C argued ſed Adjornatur, and by the Points there argued it ſeems that the following Pleas of 8, 9, 10. and 11. belong to this Caſe of pl. 7 and that they ſhould have been all join'd. ——— 3 Lev 352. Paſch. 5 W & M. in C. B. Sands, qui tam &c v. Child, Franklin and Leach, who had ſued in the Admiralty as Agents in the Eaſt India Company to ſtay

7. *Creamer* querens *v. Toakley* Defendant. The Caſe was entered, Mich. 2. Car Regis B. Rot. 421.

8. Special Actions brought upon the Statutes of the 13 R. 2. cap. 15. & 2 H. 4. cap. 4. for proſecuting of a Suit in the Court of Admiralty, where they had no Juriſdiction to hold Plea; and if one who proſecutes there as Attorney for another, (as the Caſe was) ſhall be an Offender againſt the ſaid Statutes; and where the Statutes give an Action by way of Writ, and an Action is brought here (as the Caſe was) by way of Bill, if this be good or not, [was the Queſtion.]

9. Upon this Action brought, and ſpecial Verdict found, two Points were made.

10. Firſt Point upon the Juriſdiction of the Admiralty though the Contract be beyond Sea, becauſe it is to be performed in London, the Freight being to be paid in London, if the Admiral here ought to have Juriſdiction?

11. Second, If he that proſecutes only as an Attorney there, ſhall be puniſhed within the Statutes for this Offence?

ſtay the Plaintiffs Ship from going to the Eaſt Indies, and paid all the Fees of the Proſecution, and thereupon the Ship was ſtaid. After Judgment for the Plaintiff in C. B. Error was brought in B. R. where all the Matters argued in C. B were argued again ſeveral Times in B. R. And 1ſt, That all this being done on the Behalf of the Company, the Action ought to have been brought againſt the Company, and not againſt the Defendants their Servants. But this was over-ruled by both Courts; For 1ſt, this is not like the Caſe in Godb. 385. where one ſued in the Admiralty for another by Warrant of Attorney of his Agent; For here it is not found that they have any Warrant of Attorney, and they may do it of their own Heads. But 2dly, if it was by Warrant of Attorney of the Company, yet this will not excuſe the Matter; becauſe a Warrant of Attorney, though of the King himſelf will not excuſe the doing an illegal Act; For though the Commanders are Treſpaſſors, ſo are the Perſons alſo, who do the Act. ——— 4 Mod. 176. to 182. S. C.

12. **If a** Man of Frizeland ſues an Engliſhman in Frizeland **before the Governor there,** and there recovers againſt him a certain Sum; **upon which the** Engliſhman not having ſufficient to ſatisfy **it,** comes into England, **upon which** the Governor ſends his Letters miſſive into England, omnes Magiſtratus infra Regnum Angliæ rogans, to make Execution **of the ſaid Judgment. The** Judge of the Admiralty may execute this Judgment by Impriſonment of the Party, **and he ſhall not be delivered by the Common Law; for this is** by the Law of Nations, **that** the Juſtice of one Nation ſhall be aiding to the Juſtice of another **Nation, and for one to execute the Judgment of the other; and the Law of England takes notice of this Law, and the Judge of the Admiralty is the proper Magiſtrate for this Purpoſe; for he only hath the Execution of the Civil Law within the Realm. Paſch. 5 Jac. B. R.** *Wier's Caſe,* **reſolved upon an Habeas Corpus, and remanded.**

Fol. 530. S. C. cited Lev. 267. Trin 21 Car. 2. B. R. in Caſe of Jurado v Gregory; which was a *Contract* was *made at Malaga* in Spain, *to take Merchandizes into a Ship there, and carry them to another Place*;

On a Libel in the Admiralty there it was ſuggeſted for a Prohibition, that the Contract was made upon the Land, to which it was anſwered, that though it was ſo made, yet *upon the Suit in the Admiralty of Spain Sentence was given, and the Suit here is only to have Execution* of the Sentence here, and in ſuch Caſe no Prohibition lies; and to this the Court inclined; But then it was ſaid, that the Sentence in *the principal Caſe here in Roll* was not peremptory and final to pay any Thing for Non-performance, but *was Interlocutory only*, that he ſhall receive and bring the Goods according to the Agreement, but here the Suit is for Damages for not receiving and carrying, for which Action on the Caſe lies; Whereupon it was ruled, that the Plaintiff declare upon the Suggeſtion, ſo that upon the Pleading the Matter may come judicially in Queſtion ——— Sid. 418 pl. 1. S. C. that *this was on a Sentence in the Alcade*, which is the Admiralty at Malaga, and a Prohibition was granted for the ſame Reaſon, and alſo, for that the Alcade is not as Admiralty here; And on another Motion afterwards for a Conſultation, the ſame was not granted for the ſame Reaſons. ——— Vent. 32. S. C. and becauſe the Sentence was not compleat, but only an Award that the Merchandizes ſhould be received; A Prohibition was granted.

Upon a Judgment given *in the* Court of *Admiralty they may ſue out an Execution thereof in foreign Parts*, as in France &c. Per Dr. Steward, who at the Deſire of the Court of C. B. delivered his Opinion there. Godb. 260. pl. 359. Mich. 10 Jac. in the Caſe of Greenway v. Barker.

13. **If a** Merchant of Holland brings Treſpaſs **againſt J. S.** for a Ship laden **with Merchandizes,** & quia non liquet quæ bona fuerunt in Navi prædicta, quando de partibus Hollandiæ verſus Regnum iſtud iter ſuum cepit, Mandatum eſt Comiti Hollandiæ, quod per probos & Legales Homines & Mercatores Terræ ſuæ, ubi prædictus querens ſe in Mari poſuit inquirat diligenter quæ Mercimonia carrucata fuerunt &c. & Inquiſitionem aperte & fideliter factam remandet Domino Regi. &c. 22 Ed. 1. **Liber Parliamentorum** 65. b.

14. *Libel* before the Mayor of Hull as Admiral there *againſt an Adminiſtrator* for 5 l. *for Smith's Work done for the Inteſtate, in mending a Ship for him*, and ſaid, that he arreſted the Ship within the Admiral of England's Juriſdiction. The Defendant *pleaded fully adminiſtred.* A Prohibition was pray'd, 1ſt. Becauſe it is not ſhewn that the Ship was arreſted within the Juriſdiction of the Mayor of Hull. 2dly, Becauſe Action on the *Caſe lies at Common Law for this Debt.* 3dly, Becauſe the Plea of *fully adminiſtred is triable only at Common Law*; and for theſe Reaſons a Prohibition was granted. Litt. Rep. 166. Mich. 4 Car. C. B. Aſhton's Caſe.

Keb. 684. pl. 87 Blackwell v. Clarke, ſeems to be S. C. and becauſe it

15. On a Motion for a Prohibition to a Suit in the Admiralty for *Mariners Wages*, it was agreed, that if a *Ship does not return but periſhes* by Tempeſt, Enemies, Fire &c. the Mariners loſe their Wages, for otherwiſe they would not endeavour nor hazard their Lives to preſerve the Ship. Sid. 179. pl. 14. Hill. 15 & 16 Car. 2. B. R. Anon.

was founded on a Specialty made on Land, and the Cuſtom of Merchants is, that unleſs the Ship comes home no Wages is payable to them, and conſequently not to their Executors or Adminiſtrators, and this Plea was diſallow'd in the Admiralty, and ſo it is ſuggeſted, the Court granted a Prohibition notwithſtanding Sentence and Appeal, it being contrary to a Verdict at Law and not had on due Proofs, but contrary to the Plea pleaded.

A Prohibition ſhall not go to the Admiralty to ſtay a Suit there for *Mariner's Wages*, though the Contract were upon the Land. Firſt, it is more Convenient for them to ſue there; becauſe they may all join. Again according to their Law, if the Ship periſh by the Mariner's Default, they are to loſe their Wages; therefore in this ſpecial Caſe the Suit ſhall be ſuffered to proceed there. Vent. 146. Trin. 23. Car. 2. B. R. Anon.

16. A *part Owner* of a Ship *ſued the other Owners for his Share of the Freight of the Ship* which had finiſhed a Voyage; but *the other Owners did ſet her out, and the Plantiff would not join* with the reſt on ſetting her out, or in the Charge thereof; whereupon the other Owners complained thereupon in the Admiralty, and by Order there the other Owners gave Security that if the Ship periſhed in the Voyage, to make good to the Plaintiff his Share; and if ſhe returned to reſtore his Share or to that Effect; And *in ſuch Caſe* by the Law-Marine and Courſe of the Admiralty, *the Plaintiff was to have no Share of the Freight.* It was referred to Sir Lionel Jenkins to certify the Courſe of the Admiralty who certified accordingly; And that it was ſo in all Places, and otherwiſe there could be no Navigation; whereupon now the 13th of July the Plaintiff was diſmiſt. 2 Chan. Caſes. 36 Trin. 32 Car. 2. Anon.

Show. 13. S. C. but S. P. does not appear. —Comb. 109 Knight v. Perry S. C & S. P. and a Prohibition granted.

17. The *major Part of the part Owners of a Ship agreed to ſend her a Voyage* but the others diſagreeing, the major Part according to the common Uſage ſuggeſt this in the *Admiralty Court*, and then (as uſual) they *order certain Perſons to appraiſe the Ship, and then the major Part enter into a Recognizance jointly and ſeverally to the others in a Sum proportionable to their Shares againſt all Adventures*, afterwards B. one of the diſagreeing Partners took out a Sci. fa. againſt K. upon the Recognizance, and Sentence was had againſt him in the Admiralty Court. K. mov'd for a Prohibition, for that the Admiralty had no Juriſdiction in this Caſe, and ſo all was done Coram non Judice; And the whole Court held that the *Admiralty had no Conuſance of this Matter*, and thereupon a Prohibition was granted. Carth. 26. Paſch. 1 W. & M. in B. R. Knight v. Berry.

Carth. 166. S. C. and a Prohibition granted on amending the Suggeſtion by adding a Refuſal of the Plea.— Show. 179.

18. In Caſe of *Mariners Wages* the *Admiralty* has Juriſdiction. They *may ſell the Ship and the Sails and Tackle* are part of it, and remain part when they are on Shore, and they may proceed againſt them; *But if Property be pleaded they muſt and will allow it*, if it be pleaded otherwiſe a Prohibition will be granted; Per Holt Ch. J. whereupon the Suggeſtion was altered, and an offer alleged of a Plea claiming Property, and that the Plea was refuſed, and then a Prohibition was granted. Show. 177. 179. Mich. 2 W. & M. Edmondſon v. Walker.

adds a Note, that their Courſe is not to receive a Plea without bringing the Sails into Court, viz. into the Cuſtody of the Officer; and then they will admit a Claim and Conteſt of Property.

12 Mod. 440. Grant v. Baily S. C. per Cur. it ought to go in the Caſe of a

19. The *Mate ſued the Maſter for his Wages* in the Admiralty, and Mr. Raymond moved for a Prohibition, becauſe the Maſter himſelf could not ſue there, and the Mate was not in Nature of a Mariner, but was to ſucceed the Matter if he died in the Voyage. Denied per Holt Ch. J. for the Maſter contracts with the Owners, but the Mate contracts

with

with the Maſter for his Wages as the reſt of the Mariners do. 1 Salk. 33. pl. 5. Trin. 12 W. 3. B. R. Baily v. Grant.

1 Salk. Maſter, but otherwiſe in Caſe of Mariners, and the Mate being a Mean between both it was doubted, but the Court inclined to conſider him as a Mariner, becauſe he is hired by the Maſter as other Mariners are; but the Maſter is put in the Owners. And after upon Conference with C. B. where a like Caſe was under Conſideration, it was ruled that no Prohibition ſhould go. —— Lord Raym. Rep. 632. S. C. ruled accordingly.

20. By the Courſe of the Admiralty they decree, that where there are *ſeveral Owners of a Ship, and ſome are for freighting and ſome againſt it*, that the *Majority ſhall prevail, giving the others Caurion for their reſpective Parts* againſt all Riſques, which was done in the preſent Caſe, and the Ship being loſt, they libell'd for the Caution and had a Sentence; And upon a Motion for a Prohibition, ſuggeſting, that this Caution was given at Land, and that all Matters of Property are to be order'd by the Common Law; The Court ſeem'd ſtrong that they had ſuch a Power, and conſequently have Juriſdiction over the Caution as Incident, yet it being a Matter of Conſequence and never yet determin'd they granted a Prohibition, and directed them to declare upon their Suggeſtion. 6 Mod. 162. Paſch. 3 Ann. B. R. More v. Rowbotham.

(B. 2) Court of Admiralty. Of what they may hold Plea in reſpect of the Things. Incidents and Conſequents.

1. ONE Butler, and others, *upon the Sea near the Coaſt of Suffolk robb'd the Queen's Subjects, and brought the Goods into Norfolk* where they were apprehended. At the Norfolk Aſſizes Wray Ch. J. and Periam J. were of Opinion, that becauſe the Common Law did not take Notice of the original Offence, (viz.) of the Piracy, therefore the bringing thoſe Goods to the Land which they had taken by Piracy on the Sea, did not make the ſame puniſhable at the Common Law, and thereupon they were committed to the Vice-Admiral of thoſe Counties. 13 Rep. 53. cites 28 Eliz. Butler's Caſe.

2. *One who had Letters of Marque* &c. in the Dutch War, *took an Offender* at Sea *inſtead of a Dutch Ship*, and brought her into Port, and libell'd againſt her to have her condemned as a Prize; but *ſentenced* there *that ſhe was not a Prize*; whereupon *the Offender libell'd againſt the Captor for Damages for the Hurt the Ship received in the Port.* A Prohibition was moved for, becauſe the Suit was for Damages done in the Port, for which Action lies at Common Law; but it was denied, becauſe *the original Cauſe being a taking at Sea*, and the carrying into the Port in order to have her condemn'd as Prize but a Conſequent thereof, *not only the Original, but the Conſequents alſo ſhall be tried there.* 1 Lev. 243. Trin. 20 Car. 2. B. R. Turner v. Neale.

Sid. 367. pl. 3. Turner v. Smith, S. C. but not exactly S. P. —— 2 Keb. 360. pl. 4. Turner v. Neats, S. C. and Ibid. 364. pl. 16. S. C. & S. P. and per Cur. the Rule for Prohibition was diſcharged.

3. *Goods* were *taken by Pirates as the Libel ſuppoſed, and condemn'd in Scotland*; but it appeared that they were *Contraband Goods*, going to the Dutch in the War between the Dutch and Engliſh, and taken by a Scotch Man of War. *The Goods were afterwards brought into England and ſold, and a Suit was for them in the Admiralty Here after the Sale.*

Vent. 173. Radlev v. Eglesfield, S. C was an Action upon the Stat. 13 R.

The

2. cap. 5. and 2 H. 4. cap. 11 for ſuing the Plaintiff in the Admiralty for the Ship M. pretending ſhe was taken Piratice, whereas the Plaintiff bought her Infra Corpus Comitatus. The Defendants pleaded Not Guilty to the Action, and upon the Trial would not examine any Witneſſes, but prayed the Opinion of the Court, who ſaid there was good Cauſe upon the Libel, (which now they muſt take to be true) in the firſt Inſtance for the Admiralty to proceed. —— 2 Saund. 259, 260. S. C. held, that the Defendants were not within the Penalty or Meaning of the ſaid Statutes; and denied. Hob. 78. and 113. Bingley's Caſe. —— 2 Keb. 828. pl. 48. Radley v. Whitwell, S. C. & S. P. agreed.

The Court agreed that this is not within the Statute [13 R. 2. or H. 4.] for the original Cauſe being of Piracy belonged to the Admiralty, and the Condemnation in the Admiralty of Scotland alters not the Caſe as to the Juriſdiction of the Court, but was pleadable in the Admiralty in England. But neither this nor the Sale at Land will alter the Juriſdiction, the original Matter being Piracy, which all comes in Queſtion again, and *the Sale at Land is a Matter conſequential on the Piracy, and depending on it.* 2 Lev. 25. Trin. 23 Car. 2. B. R. Ridley v. Egglesfield.

4. Libel was for a *Ship taken by Pirates and carried to Tunis, and there ſold.* A Prohibition was prayed, for that *the Ship was ſold at Land*, and ſo that Court had no Juriſdiction. Per Cur. in regard it was taken by Pirates it is originally within the Admiral's Juriſdiction, and ſo continues, notwithſtanding the Sale afterwards at Land; otherwiſe where a Ship is *taken by Enemies*, for that alters the Property. But becauſe *no Mention* was made *in the Libel that the Ship was taken ſuper altum Mare*, and though there was very much contained therein to imply it, yet the Court held that to be abſolutely neceſſary to ſupport their Juriſdiction. 1 Vent. 308. Paſch. 29 Car. 2. B. R. Ridley v. Eggleſfield.

12 Mod. 144. S. C. & S. P. per Holt Ch. J.

5. *Wherever they have not original Juriſdiction of the Cauſe*, though *there ariſes a Queſtion in it that is proper for their Conuſance*, yet that alters not, nor takes away the Power of the Common Law; But if they have Juriſdiction of the Original, though a Queſtion ariſes proper for the Common Law, yet they ſhall try that; and after Sentence, if it appear that the Matter contained in the Libel is triable at Law, we will grants a Prohibition; Per Holt Ch. J. Comb. 462, 463. Mich. 9 W. 3. B. R. in Caſe of Tremoulin v. Sands.

6 Mod. 238. S. C. mentions it as a Contract by the Builder with the Owner, and a Prohibition was denied. The Court ſaid the Caſe would have been *otherwiſe if the Retainer of the Seamen had been only to do the Work in the Harbour.*

6. W. built a Ship and launch'd her, and after *upon a Treaty with B. for the Ship, but before any Bill of Sale executed, B. hires* O. and other *Seamen to launch and rig the Ship, and to go a Voyage propoſed with him, and ſends them aboard*, and W. permitted them to come aboard, *and there they continued 4 Months fitting the Ship out to Sea, but* ſome Difference ariſing between W. and B. *the Treaty broke off, and the Seamen were diſmiſſed*, who libell'd againſt the Ship for their Wages. The Defendant ſuggeſted for a Prohibition, thrt the Work was done Infra Corpus Com' &c. and that the Ship did not proceed in her Voyage, but the Prohibition was denied; for W. the Builder, by permitting the Seamen to be put on board, conſents to the Charge upon the Ship, and by his own Act makes it liable to the Wages; and there is no Reaſon to conſider the Builder; for when he truſts the Contractor ſo far as to let the Seamen go aboard, there is no Reaſon to help him. 2 Ld. Raym. Rep. 1044. Mich. 3 Ann. Wells v. Oſman.

(C) Admiral Law.

1. IF the Owner of a Ship victualsit, and furniſhes it to Sea with Letters of Repriſal, **and the** Maſter and Mariners, **when they are at Sea,** commit Piracy upon a Friend of the King, without the Notice or Aſſent of the Owner, **yet by this the** Owner ſhall loſe his Ship **by the Admiral Law, and our Law ought to take Notice thereof. Trin.** * 3 Jac. B. R. per Popham. Trin. 12 Jac. B. per Winch, ſaid that he had known it to be ſo allowed. † Hill. 13 Jac. B. R. 21 Jac. held by Coke in the lower Houſe of Parliament.

* The Caſe was, the Owner of a Ship in the Time of Queen Eliz. furniſhed it to Sea, with Letters of Marque to take the Goods of the Spaniards, the Queen's Enemies. The Mariners and Solders, without his Directions, took a French Ship and the Goods in it, the Frenchmen being in Peace with the Queen. The Point was, if the Owner of the Ship ſhould anſwer for thoſe Goods? It was ſaid by Popham Ch. J. that where the Maſter ſends his Servant to do an unlawful Act, there the Maſter ſhall anſwer for the Servant, not where he ſends his Servant to do a lawful Act, as here, the taking of the Goods of the Queen's Enemies; there, although he miſtakes and takes the Goods of the Queen's Friends, the Maſter ſhall not anſwer for the Goods. Quære, for that the Civil Law is, that the Maſter ſhall anſwer in all publick Caſes. Mo. 776 pl. 1076. 1 Jac. Waltham v. Mulgar.

2. **If the** Maſter of the Ship pawns the Ship ſuper altum Mare, (ſcilicet Hipothecando) for Tackling and Victuals, without the Aſſent of the Owner, **yet this ſhall bind the Owner by the Admiral Law; for this is allowed for the** Neceſſity, **and our Law ought to take Notice thereof. Tr. 12 Jac. B. between** *Barnard and Bridgman*, **per Curiam, Hobart's Reports 17. the ſame Caſe; but it was there reſolved, that it had been otherwiſe if the Maſter had pawned it for his own Debts.**

Hob. 11, 12. pl. 23. Bridgman's Caſe, S. C. —— Mo. 918. pl. 1308. S. C. reſolved accordingly. —— See Tit. Hypothecation (A) pl 1. —— 2 Sid. 161. Trin. 1659. Watſon v. Warner, upon a Charter-Party between the Maſter and another concerning Fraight, a Libel was exhibited in the Admiralty, but it was inſiſted for a Prohibition, that though the Ship ſhould be liable for Things bought by the Maſter neceſſary for the Ship, as Ropes, Sails &c. yet it ſhould not be liable for Things collateral, as a Covenant for Lading. Newdigate J. ſaid, that by the Rules of the Admiralty they may attach not only the Ship, but the Perſon alſo, as it had been lately agreed; but that to do ſo in the principal Caſe would be perilous, if the Maſter, who is not Owner, but receives Wages of him, ſhall make the Owner liable to his Charges upon the Ship; and therefore ordered a Suggeſtion to be put in that the other might plead or demur. —— See Tit. Hypothecation.

3. **If an** Infant, **being a** Maſter of a Ship at St. Chriſtopher's beyond Sea, by Contract with another, undertakes to carry certain Goods from St Chriſtopher's to England, and there to deliver them, but does not afterwards deliver them according to the Agreement, but waſtes and conſumes them, **he may be ſued for the Goods in the Court of Admiralty, though he be an Infant, for this Suit is but in Nature of a Detinue, or Trover and Converſion at the Common Law. Paſch. 11 Car. B. R. between** *Furnes and Smith*, **per Curiam, a Prohibition denied for the Cauſe aforeſaid.**

Molloy, lib. 2. cap. 2. S. 13. cites S. C.

4. **If a Man** commits Piracy upon the Subjects of another King, who is in League with us, and brings the Goods into England, **and** ſells them here in a Market overt, **though by the Admiral Law this Sale ſhall not bind, but that the Owner may re-take them, yet by the Common Law this Sale ſhall bind him, and the Law of the Admiralty ought to take Notice of this. Mich. 13 Jac. B. in** *Sir Richard Bingley's Caſe*, **per Curiam, and there ſaid per Warburton, that this was the Caſe of the Merchants of Barnſtaple ruled.**

Hob. 78 pl. 103 S. C. —— Cro. E. 685. pl. 20. Trin 41 Eliz. C. B. Anon. The Goods taken at Sea were ſold at Land to the Maſter of the Ship, who was not preſent at the taking. All the Court reſolv'd, that a Suit in the Admiralty

miralty well lies; for when the Goods are tortiouſly taken on the Sea by Piracy, it gains not any Property in them againſt the Owner; and being ſold on the Land, unleſs in a Market overt, does not alter the Property againſt the Owner; and the Owner finding them in his Poſſeſſion is ſufficient; For *though the Admiralty has no Authority to meddle with Things upon the Land, yet when the original Cauſe ariſes on the Sea, and other Matters happen on the Land depending on the original Cauſe, thoſe Matters, though done upon the Land, ſhall be tried in the Admiral's Court*; and this Sale, though made in a Market overt, being void becauſe it was made to the Owner of the Ship, and Party to the Charge thereof, and ſo to be intended Party to the Tort, a Conſultation was awarded. ——— 2 Saund. 260. Mich. 22 Car. 2 in Caſe of Radley v. Egglesfield, the Court denied the Caſe of Bingley in Hob. 78. and ſaid, that where a Spoliation upon the Sea is the original Foundation of the Suit in the Admiralty, the Admiralty ſhall proceed to try and determine it notwithſtanding any other claims Property by Sale made upon the Land after ſuch Spoliation ſuppoſed to be made. ——— Vent. 308. Paſch. 29 Car. 2. B. R. Anon. S. P. of a Ship taken by Pirates and ſold at Tunis held accordingly, but that otherwiſe it is where a Ship is taken * by Enemies, for that alters the Property, and that ſo was the Opinion of Ld. Hale in Egglefield's Caſe, contrary to Ld. Hobart in the Spaniſh Ambaſſador's Caſe, 78. and cited Cro. E. 685. But afterwards it was obſerved upon the Libel, that no Mention was made that the Ship was taken Super altum Mare, and though very much was contained therein to imply it, yet the Court held it to be abſolutely neceſſary to ſupport their Juriſdiction.

* 2 Brownl 11 Mich 8 Jac. B. R. Weſton's Caſe, S. P. and a Prohibition granted, and cites; E. 4. 14. ——— Fitzh. Barre, pl. 90. cites S. C. that in ſuch Caſe the Captor ſhall have the Ship, and not the King, nor the Admiral, nor the Party whoſe Property it was before, becauſe he came not freſhly the ſame Day that it was taken from him, before Sun ſet, and claimed it.

5. The Civil Law is, that *if two Ships meet at Sea together, although they do not go forth as Conſorts*, and the *one Ship in the Preſence of the other takes a Ship* with Goods in it, the *other Ship ſhall have the Moiety*, or one half of the Ship and Goods taken; for although it did not take the Ship, yet the Preſence thereof there at the Time of the taking was a Terror to the other Ship which was taken, ſine quo, the other Ship could not be ſo eaſily taken. 2 Le. 182. pl. 224. 32 Eliz. C. B. Somers v. Buckley.

6. The *King of England* being *in Amity with the King of Spain, and the Hollanders* &c. *and there being an Enmity between thoſe of Holland the Spaniards, one of Holland, upon the High Seas, in Aperto Prelio took the Goods of a Subject of Spain, and brought them into England infra Corpus Comitatus*, and for that the Goods were in Solo Amici, the Spaniard libell'd for them in the Admiral Court; But it was reſolved per tot. Cur. B. R. upon Conference that the Spaniard had loſt the Property of the Goods for ever, and had no Remedy for them in England; for he that will ſue for Goods robbed at Sea, ought by Law to prove two Things, 1ſt. That the Sovereign of the Plaintiff was, at the Time of the Taking, in Amity with the King of England. 2dly, That he that took the Goods was, at the Time of the Taking, in Amity with the Sovereign of him whoſe Goods were taken; for every Enemy may lawfully take of another, and therefore the Spaniard could not be guilty of any Deprivation or Robbery, but of a lawful Taking; and it was reſolved further, that the Goods ſo taken being within this Realm infra Corpus Comitatus in ſolo Amici, if the Spaniard ſue for them Civiliter in the Court of Admiralty, that a Prohibition ſhould be granted, and that it ſhould be determined by the Laws and Statutes of England, and not by the Civil Law. 4 Inſt. 154. cap. 26. cites Trin. 2 Jac.

7. An Engliſh *Ship is taken by an Enemy*, and is afterwards *retaken again by an Engliſhman*; the Owner of the Ship cannot ſue for it in the Admiralty, becauſe the Ship was gained by Battle of an Enemy, and neither the King, nor the Admiral, nor the Parties to whom the Property was before ſhall have that. 2 Brownl. 11. Mich. 8 Jac. Weſton's Caſe.

8. If *any Injury, Robbery, Felony, or other Offence* be *done* upon *the High Seas*, Lex Terræ extends not to it, therefore the *Admiral has Conuſance* thereof, and may proceed, according to the Marine Law, by Impriſonment of the Body, and other Proceedings, as have been allow'd by the Laws of the Realm. 2 Inſt. 51.

9. If

9. If a *Ship* be *taken by Letters of Mart, and* be *not brought Infra Præſidia of that King by whoſe Subjects it was taken, it is no lawful Prize*, and the Property not altered, and therefore a Sale made thereof is void; Agreed per Cur. abſente Reeve J. Mar. 110, 111. pl. 188. Trin. 17 Car.

10. *Though a Ship coming from a foreign Kingdom be in* a Caſe of *inevitable Danger*, and the Tackle damaged and broken, *and no Probability of ſaving any Part* of it, partly in reſpect of the Tempeſt, and partly in reſpect of the Barbarity of the Inhabitants, who carry away every thing caſt upon the Shore, yet in ſuch Caſe the *Maſter without the Owners cannot ſell the Ship*; Per Ld. Ch. B. Hale, after ſeveral Arguments before him. Sid. 453. pl. 20. Paſch. 22 Car. 2. Tremenhere v. Treſilian.

11. If a *Mariner or Ship-Carpenter runs away* he *loſes his Wages* due; Per Twiſden, which Hale granted. Mod. 93. pl. 2. Paſch. 24 Car. 2. B. R. Anon.

12. Sentences in Courts of Admiralty ought to *bind Generally* according to *Jus Gentium*; per Cur. Skin. 59. Mich. 34 Car. 2. B. R. in Caſe of Hughes and Cornelius. Raym. 473. S. C. held accordingly. ——2 Show. 232. pl. 228.

S. C. and per Cur. It is but agreeable with the Law of Nations, that we ſhould take Notice and approve of the Laws of the Countries in ſuch Particulars; and if you are aggrieved you muſt apply to the King and Council as being a Matter of Government, and he will recommend it to his Liege Ambaſſador if he ſees Cauſe; and if not remedied, he may grant Letters of Mart and Reprizal; and this Caſe was reſolv'd by all the Court upon ſolemn Debate. This being of an Engliſh Ship taken by the French, and as a Dutch Ship in Time of War between the Dutch and French; and Judgment for the Defendants, who had had a Sentence for the Ship and Goods in the Admiralty Court in France. ——S. C. cited Show. 143.

13. *Piracy committed by the Subjects of the French King, or of any other Prince or Republick, in amity* with the Crown of England *upon the Britiſh Seas*, are Puniſhable properly by the Crown of England only, for the Kings of the ſame have iſtud Regimen & Dominium excluſive of the King's of France, and all other Princes and States whatſoever. Molloy 60, 61. cap 4. S. 11.

14. *Prize or No Prize*, is a Matter not triable at Common Law, but altogether appropriated to the Juriſdiction of the Admiralty. Comb. 474. Hill. 10 W. 3. In the Exchequer. Brown v. Franklyn.

15. The Defendant was in Execution in the Priſon of the Admiralty, upon a Sentence given againſt him in that Court, and an Hab. Corp. iſſued to remove him from thence, to anſwer an Action in B. R. and upon the Return it was mov'd, that he might be committed to the Marſhal. For he was not chargeable in the Admiralty Priſon, and there ought not to be a Failure of Juſtice. But Holt Ch. J. ſaid, that this was new; that tho' the Admiralty Proceedings were by the Civil Law, yet they were ſupported by the Cuſtom of the Realm, and this Court muſt not elude their Proceſs; beſides, there was no Action depending in B. R. And the Defendant was remanded. 1 Salk. 351. Trin. 1 Ann. B. R. Keache's Caſe.

(D) How they may *proceed* there.

Fol. 531.

1. IF a Libel be in the Court of Admiralty touching Goods ſuppoſed to come to the Defendant by Depredation, and the Defendant obliges himſelf, his Goods and his Heirs, to anſwer the Action, and after the Defendant does not obey the Court, there they may take Godb. 193. pl. 275. and ibid. 260. pl. 352. Mich. 10 Jac. C.

B. Greenway v. Baker. S. C. argued and Civilians at the Request of the Court delivered their Opinions, and Coke Ch. J. agreed that the Admiralty might take the Body in Execution, which are for the moſt part the Maſters of the Ships and Merchants, who are tranſeuntes, and therefore if they ſhould not arreſt their Bodies, they might perhaps many Times loſe the Benefit of their Suits; but he ſaid, that they could not in any Caſe take forth Execution upon Lands; But the principal Caſe was adjourn'd.——Br. Admiral &c. pl. 1 cites 19 H. 6. 7.——See S. C. ſup. at (A. 2)

take his Body; **for every Court hath his ſeveral Courſe of Proceeding, and this is the Uſage there. Mich. 10 Jac. B. dilatur.**

The Court of Admiralty proceeding by the Civil Law is no Court of Record,

2. So **in the ſaid Caſe, if the** Defendant found Fide-juſſores, **and after** Sentence paſs'd for the Plaintiff, **the** Bodies of the Fide-juſſores, by the Law of the Admiralty, may be taken in Execution; **For this is the Uſage there. Hill. 10 Jac. between** *Legiere and Greenway* **Plaintiffs,** *and Baker* **Defendant, and Prohibition denied.**

and therefore cannot take any ſuch Recognizance as a Court of Record may do; and for taking Recognizances againſt the Laws of the Realm, we find that Prohibitions have been granted, as by Law they ought. 4 Inſt. 135. cap. 22.——But per Holt Ch. J. the Court of Admiralty may take Stipulations for Bail, and proceed on them; and it was conſtantly allow'd, tho' 4 Inſt. 135 is of another Opinion. 2 Ld. Raym. 1286. Paſch. 6 Ann.

3. 15 *R. 2. cap. 3. S. 1. Item, at the great and grievous Complaint of all the Commons made to our Lord the King in this preſent Parliament, for that the Admirals and their Deputies do incroach to them divers Juriſdictions, Franchiſes, and many other Profits pertaining to our Lord the King, and to other Lords, Cities and Boroughs, beſides thoſe they were wont or ought to have of Right, to the great Oppreſſion and Impoveriſhment of all the Commons of the Lord, and hinderance and loſs of the King's Profits, and of many other Lords, Cities and Boroughs through the Realm.*

Treſpaſs of taking five Cows and twenty Sheep. Yelverton ſaid, ſuch a Day and Year the Defendant affirmed Plaint of Treſpaſs in

4. *S. 2. It is declared, ordained, and eſtabliſhed, that of all manner of Contracts, Pleas and Quarrels, and of all other Things done riſing within the bodies of Counties as well by Land as by Water, and alſo * Wreck of the Sea, the Admiral's Court ſhall have no manner of Cognizance, Power nor Juriſdiction; but all ſuch manner of Contracts, Pleas, and Quarrels, and all other Things riſing within the bodies of Counties, as well by Land as by Water, as afore, and alſo Wreck of the Sea ſhall be tried, determined, diſcuſſed, and remedied by the Laws of the Land, and not before, nor by the Admiral, nor his Lieutenant in any wiſe.*

the Court of Admiralty before W. T. Steward of R. Earl of H againſt the Plaintiff, of *Treſpaſs done upon the Sea*, and had *Citation* to cite the Plaintiff to appear before the Steward ſuch a Day, directed to the Defendant to ſerve the Citation; and *at the Day the* now *the now Plaintiff made Default*, and that *by the Uſage of the Court he ſhall be amercied* for ſuch Default by Diſcretion of the Steward *to the Uſe of the Plaintiff*, by which he was amerced at 20 Marks, wherefore this Defendant was commanded to levy it of his Goods for the ſaid Sum; by which he, the Day Year and Place in the Declaration, *took the Goods in Execution* for the ſaid Sum; Judgment ſi Actio; per Forteſcue, he ſhall not meddle upon the Land, but upon the Sea. Per Newton; *The Statute* reſtrains him that he ſhall not hold Plea of a Thing ariſing within the Body of the County; but it does not *reſtrain him to make Execution upon the Land, and they may take his Body in Execution upon the Land. And* the ſame Law of *his Goods*, and ſo was the Opinion of all the Court. *And* at this Day *they ſerve their Citations upon the Land.* Br. Admirals &c. pl. 1. cites 19 H. 6. 7.——S. C. cited 13 Rep. 52. pl. 21. Trin. 7 Jac. in the Caſe of the Admiralty, and reſolved there that the Statutes of R. 2 and H. 4. are to be intended of a Power to hold Plea, and not of a Power to award Execution, viz. de Juriſdictione tenendi Placita; Not de Juriſdictione exequendi; For notwithſtanding the ſaid Statutes, the Judge of the Admiralty may do Execution within the Body of the County.——S C. cited Cro. E. 685. per Cur. in pl. 20.——S. C. cited 2 Brownl. 26. Trin. 9 Jac. in Caſe of the Admiral Court. ——S. C cited 2 Inſt. 51.

* Where it provided by this Statute that the Admiral's Court ſhallnot have Juriſdiction or Conuſance of Wreck of the Sea, yet he ſhall have Conuſance of Flotzam Jetſam & Lagan; For Wreck of Sea is when the Goods are caſt by Sea upon the Land, and ſo Infra Corpus Comitatus, whereof the Common Law takes Cognizance; but the other three are all upon the Sea, and therefore of them the Admiral has Juriſdiction; Per Cur. 5 Rep. 106. b in Sir Hen Conſtable's Caſe cites Bract. Lib. 3. fol. 120.——S. P. admitted as to Flotſam, Jetſam and Lagan. Raym. 96. Hill. 17 Jac. B. R.

5. Never-

5. *S.* 3. *Nevertheleſs, of the death of a Man, and of a Maim done in great Ships, being and hovering in the main Stream of great Rivers, only beneath the* * *Bridge of the ſame Rivers nigh to the Sea, and in no other Places of the ſame Rivers, the Admiral ſhall have Cognizance, and alſo to arreſt Ships in the great Flotes for the great Voyages of the King and of the Realm; ſaving always to the King all manner of Forfeitures and Profits thereof coming.*

* Ow. 122. Mich. 7 Jac. in Caſe of Leigh v. Burleigh, per Cur. the Tranſlator of this Statute miſtook Bridges for Points, that is to ſay, the Land's End.—— Cay's Abridgment, Tit. Admiralty calls it Ports.

6. *S.* 4. *And he ſhall have alſo Juriſdiction upon the ſaid Flotes, during the ſaid Voyages only, ſaving always to the Lords, Cities, and Boroughs, their Liberties and Franchiſes.*

7. 13 *R.* 2. *cap.* 5. *S.* 1. *Item, foraſmuch as a great and common Clamour and Complaint hath been oftentimes made before this Time, and yet is, for that the Admirals and their Deputies hold their Seſſions within divers Places of this Realm, as well within Franchiſe as without, accroaching to them greater Authority than belongeth to their Office, in prejudice of our Lord the King, and the Common Law of the Realm, and in diminiſhing of divers Franchiſes, and in deſtruction and impoveriſhing of the common People;*

8. *S.* 2. *It is accorded and aſſented, that the Admirals and their Deputies ſhall not meddle from henceforth of any Thing done within the Realm, but only of a Thing done upon the Sea, as it hath been uſed in the Time of the Noble Prince King Edward, Grandfather of our Lord the King that now is.*

It was agreed that by this Statute the Admiral is prohibited intermeddling with any Thing within the Body of the County as all *Havens* are, and therefore Havens are *not within the Admiralty*, but all the Land upon which the Sea-Water flows and reflows is within the Juriſdiction of the Admiral. Mo. 122. in pl. 265. Paſch. 25 Eliz. ——All Rivers and Havens are within the County. 4 Inſt 137. &c. cap. 22.——All the Ports and Havens within England are Infra Corpus Comitatus; Per Coke Ch. J. and vouch'd 23 H. 6. and 30 H. 6. Holland's Caſe, who was Earl of Exeter and Admiral of England, and becauſe he held Plea in the Court of Admiralty of a Thing done Infra Portum de Hull, Damages were recover'd againſt him of 2000l. Godb. 261.

It is no Part of the Sea where one may ſee what is done of the one Part of the Water and of the other; As to ſee from one Land to the other. 4 Inſt. 140. cap. 22 cites 8 E. 2. Tit. Corone. 399.

9. 8 *Eliz. cap.* 5. *Every Judgment and Sentence diſinitive given, in any Civil and Marine Cauſe, upon Appeal to the Queen in the Court of Chancery, by Commiſſioners or Delegates nominated by her Majeſty, ſhall be final.*

If an erroneous Sentence be given in the Admiralty no Writ of Error lies, but an Appeal before the Delegates, as appears by the Statute 8 Eliz. cap. 5. 4 Inſt. 135. cap. 22.

10. The *Proceedings* in the Court of the Admiralty *are according to the Courſe of the Civil Law*, and therefore the Court is *not of Record*, and by Conſequence *cannot aſſeſs any Fine* in ſuch Caſe, as Judges of a Court of Record may do. 12 Rep. 104. Hill. 2 Jac. Tomlinſon v. Philips.

11. E. was *committed on an Indictment of Piracy*, and *S. aſſiſted him* with Ropes, and other Engines, *to make his Eſcape*, whereupon the Judge of the Admiralty committed S. to the Marſhalſea. Upon a Habeas Corpus out of B. R. and the Cauſe returned as before, the whole Court held, that though all the Fact done by S. was upon the Land, and within the Body of the County, yet *becauſe it depends on the Piracy* committed by E. with which the temporal Judges have nothing to do, *he was remanded*; For he is Quaſi an Acceſſory to the firſt Piracy, and determinable by the Admiral; As if *Sentence is given in the Admiralty for a Marine Cauſe*, the *Execution* of this Sentence, *either by the Body, or*

Noy 131. S. C.—— See Stat. 11 & 12 W. 3. cap. 7 S. 9. and 8 Geo. 1. cap. 24 S. 3. at Tit. Pirates and Piracy (E)

by the Goods of the Party condemn'd, *extends throughout the Realm of England for the Court of the Admiralty, becauſe it depends on the principal and firſt Sentence.* Yelv. 134, 135. Mich. 6 Jac. B. R. Scadding's Caſe.

12. Though the Court of Admiralty is not a Court of Record, becauſe they proceed according to the Civil Law, according to Br. Error, pl. 77. [177.] yet by Cuſtom of the Court they may *amerce the Defendant for his Default* at their Diſcretion. 13 Rep. 53. Trin. 7 Jac. in the Caſe of the Admiralty.

13. The Admiralty cannot puniſh by *Impriſonment, Pecuniary Puniſhment*, nor otherwiſe. 2 Brownl. 13. Hill. 8 Jac. per Cur. in Caſe of the Maſter &c. of Trinity Houſe v. Boreman.

S. C. cited Raym. 78. Paſch. 15 Car. 2 B. R. in Caſe of Par v. Evans, where a Prohibition was prayed to the Court of Admiralty, for that the Plaintiff here did ſue upon a *Recognizance* there taken *by way of Stipulation* by one that was but Surety *in the Nature of Bail*, and that Court not being a Court of Record, they cannot take any Recognizance; but after long Debate reſolved, in Favour of Trade, ſuch a Stipulation is good, and ſhall bind the Sureties. ——— Ibid. cites Godb. 260. pl. 359. Greenway v. Baker.

14. A *Recognizance taken in the Court of Admiralty to ſtand to the Order of the Court is void*; Per Serjeant Harris, Arg. ſaid it had been ſo adjudged; and per Warburton it is not a Court of Record. Noy 24. Record v. Jobſon.

* Keb. 552. pl. 62. Pane v Evans, S. C. and the Court ſaid, that as this Caſe is, ſhould we grant a Prohibition, we ſhould overthrow the whole Court.

Sty. 340. Mich. 1652. B. R. Tench v. Hubriſon, the Court held, that the Admiralty cannot proceed criminally againſt one that is in Contempt to the Court, but ſaid, they would hear Civilians if they would ſpeak to it the Saturday following.

15. *A Man was taken by a Warrant* iſſued *out of the Admiralty, and reſcued out of the Meſſenger's Hands*, for which the Perſon, who made the Reſcous, was arreſted for a Contempt to the Court, in a Suit depending there between him and another. Roll Ch. J. ſaid, that if the Cauſe was Maritime the Admiralty might examine a Contempt in that Cauſe, but they cannot proceed criminally againſt the Reſcuer of him that did the Contempt, and ordered Cauſe to be ſhewn why a Prohibition ſhould not go. Sty. 171. Mich. 1649. Anon.

But the Parties afterwards put into their Suggeſtion, that the original Cauſe, on which the Proceſs was grounded, was a Matter wherein the Court of Admiralty had no Cognizance; and therefore a Prohibition was granted; for then the Reſcous could be no Contempt. Ibid.

16. The Court of Admiralty may puniſh ſuch as reſiſt the Proceſs of that Court, and may *fine and impriſon for a Contempt* to it acted in the Face of it, though they are no Court of Record; But if they ſhould proceed to *give the Party Damages*, a Prohibition would be granted Quoad that; Per Cur. Vent. 1. Mich. 20 Car. 2. B. R. Sparks v. Martin.

17. When a *Proviſionate Decree*, as they call it, or Primum Decretum, is made, (which is a Decree *of the Poſſeſſion of the Ship*) *and the Ship is ſo ſeiſed, it is the Courſe of the Admiralty, upon Security given, to ſuffer her to be hired out*; Sic dictum fuit. Vent. 174. Mich. 23 Car. 2. B. R. in Caſe of Radly v. Egglesfield.

Mo. 815. pl. 1102. in Caſe of the Spaniſh Ambaſſador v. Plage, Sentence was given for the King of Spain to have the Goods, but the Court did not determine the Intereſt and Right of them, upon which Sentence the Defendant ſued to the Ld Chancellor for an Appeal; but it was alleged, that it did not lie, the Sentence being only of the Poſſeſſion, and not of the Right or Intereſt, and thereupon Ld. Chancellor doubting heard Counſel, and at length he went into his

18. *But upon* ſuch Decree an *Appeal* being *to the Delegates*, and Ld. Keeper being informed that no Appeal lay to them upon it, *becauſe it was only an interlocutory Decree*, upon hearing Counſel he *ſuperſeded the Commiſſion.* Vent. 174. in Caſe of Radley v. Egglesfield.

his Closet, and brought thence a Book of the Civil Law, wherein he found a Text precise, that Appeal lies as well where the Sentence is of the Possession, as where it is of the Interest and Right; and thereupon granted an Appeal.

19. Per Holt Ch. J. an *Obligation* taken in the Admiralty *to appear and sue there*, is suable in that Court, for it is a *Stipulation in Nature of Bail at Common Law*; But where there were 13 *Part-owners of a Ship, and one of them refused to let her go to Sea, whereupon a Stipulation was taken for the Share of the Party refusing*, and afterwards the Ship went her Voyage, and this Stipulation being put in Suit in the Court, a Prohibition was granted, because the Building the Ship and the Charter-party were at Land. 3 Salk. 23. Pasch. 1 W. 3. King v. Perry.

20. The Defendant gave *Bail upon the Stipulation* in the Nature of a Recognizance, *by which he bound himself and his Heirs to abide the Judgment of the Court* of Admiralty, but *died before the Sentence*, and *yet the Court proceeded against the Bail.* It was insisted among other Things for a Prohibition, that if the Defendant had been in Gaol, and died within the Walls of the Prison, the Suit must have abated, and there was no Reason why, by the Defendant's being in Custody of his Bail, the Suit should be in a better Condition; and that whereas the Security given was only, that the Defendant should abide their Judgment, and the Admiralty now have extended it to the Defendant's Executor. On the other Side it was said, that Bail in the Admiralty are sued as Principals, and that this is the Course of the Court, because the Plaintiff and Defendant being Seafaring-Men, are subject to more Casualties than others The Case was adjourned and compounded. 1 Salk. 33. Pasch. 13 W. 3. B. R. Betts v. Hancock.

21. You cannot *appeal* in the Court of Admiralty *before definitive Sentence* for a Gravamen, as you may in the Ecclesiastical Court. 2 Ld. Raym. Rep. 1248. Pasch. 5 Ann. Brown v. Benn & al'.

22. The Court of Admiralty granted *Process against the Freight of a Ship, in Nature of a foreign Attachment, for Non-appearance*; this is wrong, and a Prohibition was granted, though there was no Libel; but the Coutt of Admiralty *may proceed against the Ship* for Non-appearance, though not against the Freight. Mich. 8 Ann. B. R. Bricket & al' v. Pearse.

(E) [Court of Admiralty.] Of what *Things, in respect of the Place where it arises,* they may hold Plea.

1. BRODK Judgment, 123. A Judgment in the Court of Admiralty De re facta super Terram is void, & coram non Judice. S. P. resolved by the two Ch. Justices and Ch. Baron. 13 Rep. 51. Trin. 7 Jac. Case of the Admiralty.

2. They cannot hold Plea upon a Bill, or other Thing done beyond Sea upon the Land, because the Statute is, that he shall hold Plea of Things done only upon the Sea. Mich. 14 B. R. between *Coulston and Baptist Metaxa* resolved, where the Bill was made apud Zante, which is in Italy. Mich. 7 Ja. B. * *Leigh's Case*, per Curiam. * Ow. 122, 123. Leigh v. Burleigh and Cradock; The Case was,

by the Goods of the Party condemn'd, *extends throughout the Realm of England for the Court of the Admiralty, becauſe it depends on the principal and firſt Sentence.* Yelv. 134, 135. Mich. 6 Jac. B. R. Scadding's Caſe.

12. Though the Court of Admiralty is not a Court of Record, becauſe they proceed according to the Civil Law, according to Br. Error, pl. 77. [177.] yet by Cuſtom of the Court they may *amerce the Defendant for his Default* at their Diſcretion. 13 Rep. 53. Trin. 7 Jac. in the Caſe of the Admiralty.

13. The Admiralty cannot puniſh by *Impriſonment*, *Pecuniary Puniſhment*, nor otherwiſe. 2 Brownl. 13. Hill. 8 Jac. per Cur. in Caſe of the Maſter &c. of Trinity Houſe v. Boreman.

S. C. cited Ravm. 78. Paſch. 15 Car. 2 B. R. in Caſe of Par v. Evans, where a Prohibition was prayed to the Court of Admiralty, for that the Plaintiff here did ſue upon a *Recognizance* there taken *by way of Stipulation* by one that was but Surety *in the Nature of Bail*, and that Court not being a Court of Record, they cannot take any Recognizance; but after long Debate reſolved, in Favour of Trade, ſuch a Stipulation is good, and ſhall bind the Sureties. ——— Ibid. cites Godb. 260. pl. 359. Greenway v. Baker.

14. A *Recognizance taken in the Court of Admiralty to ſtand to the Order of the Court is void*; Per Serjeant Harris, Arg. ſaid it had been ſo adjudged; and per Warburton it is not a Court of Record. Noy 24. Record v. Jobſon.

* Keb. 552. pl. 62. Pane v Evans, S. C. and the Court ſaid, that as this Caſe is, ſhould we grant a Prohibition, we ſhould overthrow the whole Court.

Sty. 340. Mich. 1652. B. R. Tench v. Hubriſon, the Court held, that the Admiralty cannot proceed criminally againſt one that is in Contempt to the Court, but ſaid, they would hear Civilians if they would ſpeak to it the Saturday following.

15. *A Man was taken by a Warrant* iſſued *out of the Admiralty, and reſcued out of the Meſſenger's Hands*, for which the Perſon, who made the Reſcous, was arreſted for a Contempt to the Court, in a Suit depending there between him and another. Roll Ch. J. ſaid, that if the Cauſe was Maritime the Admiralty might examine a Contempt in that Cauſe, but they cannot proceed criminally againſt the Reſcuer of him that did the Contempt, and ordered Cauſe to be ſhewn why a Prohibition ſhould not go. Sty. 171. Mich. 1649. Anon.

But the Parties afterwards put into their Suggeſtion, that the original Cauſe, on which the Proceſs was grounded, was a Matter wherein the Court of Admiralty had no Cognizance; and therefore a Prohibition was granted; for then the Reſcous could be no Contempt. Ibid.

16. The Court of Admiralty may puniſh ſuch as reſiſt the Proceſs of that Court, and may *fine and impriſon for a Contempt* to it acted in the Face of it, though they are no Court of Record; But if they ſhould proceed to *give the Party Damages*, a Prohibition would be granted Quoad that; Per Cur. Vent. 1. Mich. 20 Car. 2. B. R. Sparks v. Martin.

17. When a *Proviſionate Decree*, as they call it, or Primum Decretum, is made, (which is a Decree *of the Poſſeſſion of the Ship*) *and the Ship is ſo ſeiſed, it is the Courſe of the Admiralty, upon Security given, to ſuffer her to be hired out*; Sic dictum fuit. Vent. 174. Mich. 23 Car. 2. B. R. in Caſe of Radly v. Egglesfield.

Mo. 815. pl. 1102. in Caſe of the Spaniſh Ambaſſador v. Plage, Sentence was given for the King of Spain to have the Goods, but the Court did not determine the Intereſt and Right of them, upon which Sentence the Defendant ſued to the Ld Chancellor for an Appeal; but it was alleged, that it did not lie, the Sentence being only of the Poſſeſſion, and not of the Right or Intereſt, and thereupon Ld. Chancellor doubting heard Counſel, and at length he went into his

18. *But upon* ſuch Decree an *Appeal* being *to the Delegates*, and Ld. Keeper being informed that no Appeal lay to them upon it, *becauſe it was only an interlocutory Decree*, upon hearing Counſel he *ſuperſeded the Commiſſion.* Vent. 174. in Caſe of Radley v. Egglesfield.

his Cloſet, and brought thence a Book of the Civil Law, wherein he found a Text preciſe, that Appeal lies as well where the Sentence is of the Poſſeſſion, as where it is of the Intereſt and Right; and thereupon granted an Appeal.

19. Per Holt Ch. J. an *Obligation* taken in the Admiralty *to appear and ſue there*, is ſuable in that Court, for it is a *Stipulation in Nature of Bail at Common Law*; But where there were 13 *Part-owners of a Ship, and one of them refuſed to let her go to Sea, whereupon a Stipulation was taken for the Share of the Party refuſing*, and afterwards the Ship went her Voyage, and this Stipulation being put in Suit in the Court, a Prohibition was granted, becauſe the Building the Ship and the Charter-party were at Land. 3 Salk. 23. Paſch. 1 W. 3. King v. Perry.

20. The Defendant gave *Bail upon the Stipulation* in the Nature of a Recognizance, *by which he bound himſelf and his Heirs to abide the Judgment of the Court* of Admiralty, but *died before the Sentence*, and *yet the Court proceeded againſt the Bail.* It was inſiſted among other Things for a Prohibition, that if the Defendant had been in Gaol, and died within the Walls of the Priſon, the Suit muſt have abated, and there was no Reaſon why, by the Defendant's being in Cuſtody of his Bail, the Suit ſhould be in a better Condition; and that whereas the Security given was only, that the Defendant ſhould abide their Judgment, and the Admiralty now have extended it to the Defendant's Executor. On the other Side it was ſaid, that Bail in the Admiralty are ſued as Principals, and that this is the Courſe of the Court, becauſe the Plaintiff and Defendant being Seafaring-Men, are ſubject to more Caſualties than others The Caſe was adjourned and compounded. 1 Salk. 33. Paſch. 13 W. 3. B. R. Betts v. Hancock.

21. You cannot *appeal* in the Court of Admiralty *before definitive Sentence* for a Gravamen, as you may in the Eccleſiaſtical Court. 2 Ld. Raym. Rep. 1248. Paſch. 5 Ann. Brown v. Benn & al'.

22. The Court of Admiralty granted *Proceſs againſt the Freight of a Ship, in Nature of a foreign Attachment, for Non-appearance*; this is wrong, and a Prohibition was granted, though there was no Libel; but the Coutt of Admiralty *may proceed againſt the Ship* for Non-appearance, though not againſt the Freight. Mich. 8 Ann. B. R. Bricket & al' v. Pearſe.

(E) [Court of Admiralty.] Of what *Things, in reſpect of the Place where it ariſes*, they may hold Plea.

1. BRODR Judgment, 123. A Judgment in the Court of Admiralty De re facta ſuper Terram is void, & coram non Judice. S. P. reſolved by the two Ch. Juſtices and Ch. Baron. 13 Rep. 51. Trin. 7 Jac. Caſe of the Admiralty.

2. They cannot hold Plea upon a Bill, or other Thing done beyond Sea upon the Land, becauſe the Statute is, that he ſhall hold Plea of Things done only upon the Sea. Mich. 14 B. R. between *Coulſton and Baptiſt Metaxa* reſolved, where the Bill was made apud Zante, which is in Italy. Mich. 7 Ja. B. * *Leigh's Caſe*, per Curiam. * Ow. 122, 123. Leigh v. Burleigh and Cradock; The Caſe was,

that B. was Master of a Ship, and gave Money to C. to buy

am. Hill. 7 Ja. B. between *Hickman and Skinner* adjudged. Hill. 9 Jac. B. per Curiam, between *Davison and Burneby*. Hobart's Reports, Case 268, 269.

Sailor's Cloaths for him, and C. bought such Cloaths for B. of L. in St. Catherine's Parish, near the Tower in London whereby L. delivered the Cloaths to B. in his Ship then in the Thames, adjoining to St. Catherines, and the Money not being paid, L. sued B. in the Admiralty Court, and a Prohibition was awarded, because the Contract was made upon the Land, & Infra Corpus Comitatus, and therefore the Admiral can have no Jurisdiction; for the Statute of 13 & 15 R. 2. and 2 H. 4. cap. 11. are, that the Admiral shall not have Conusance but only of Things done Super Altum Mare, and cites 5 Rep. 107. and so it was resolved by the Justices. —— 2 Brownl. 37. Cradock's Case, S. C. and a Prohibition granted accordingly, and for the same Reason.

2 Bulst. 322. D'Acuna v. Points, S. C. and a Prohibition granted by the Opinion of

3. [And therefore] they cannot hold Plea of a Suit by the King of Spain, for cutting down of Brasil Wood in Brasilia, because it is upon the Land. Hill. 12 Ja. B. R. between the *King of Spain and Pounter* resolved, and a Prohibition granted, and it was after tried at Common Law in a Trover and Conversion.

the whole Court. —— Roll Rep. 133. pl. 10. the Spanish Ambassador v. Pountes, S. C. and per Coke Ch. J. and Doderidge, the Ambassador may have Action for it in B. R. and afterwards the Ambassador's Counsel came into B. R. and said he would surcease his Suit in the Admiralty, and bring an Action here; and the Court, by Consent of the Parties, ordered the same accordingly, and so no Prohibition was granted; and afterwards the King of Spain brought an Action against him in B. R.

Ow. 122. Leigh v. Burley S. C. and a Prohibition was granted.

4. They cannot hold Plea of a Thing done upon the Land in England. Mich. 7 Jac. B. *Leigh's* Case, per Curiam.

——2 Brownl. 37. Cradock's Case S. C. accordingly.

* Ow. 122. Leigh v. Burley S. C. accordingly. ——2 Brownl. 37. Cradock's Case S. C.

5. They cannot hold Plea of a Thing done upon the Thames, because this is within the Body of the County. Mich. 7 Jac. B. * *Leigh's* Case, per Curiam, and a prohibition granted accordingly. Mich. 5 Ja. B. between *Tomkins and Goodwin*, per Curiam, and a Prohibition granted were the Suit was for Anchorage. Hill. 8 Ja. B. † *Bereman's* Case, resolved and a Prohibition granted.

accordingly, and says that the Mayor of London has Jurisdiction upon the Thames as far as Wapping, and if a Murder be committed on the Thames, it shall not be tried by the Admiral. ——Le. 106. pl. 144. Pasch. 30 Eliz. B. R. Sir Julius Cæsar's Case S. P. ——2 Roll Rep. 413. Mich. 21 Jac. B. R. Anon. S. P. ——Mo. 892. pl. 1255. Mich. 16 Jac. B. R. Anon. all the Court agreed that Lime-House is within the Body of the County, and not within the Jurisdiction of the Admiral. —— The Admiral has no Jurisdiction of Things done at Ratcliffe nor upon the Thames; Ibid. Doderidge J. cited 8 E. 2 Fitzh. Corone. 399 ——He sued in the Admiralty, because the Ship called the S. lying upon the Thames at Redriff at Anchor, was there broke by the Ship call'd the Æneas by the Negligence of the Officers thereof; and a Prohibition was awarded, because the Thames is infra Corpus Comitatus, and not within the Jurisdiction of the Admiralty. Mo. 916. pl. 1302. 1 Jac. Dorrington's Case.

† 2 Brownl. 13. for staying the Ship for Ballast, Trinity-House v. Bowman. S. C.

6. They cannot hold Plea for the taking of certain Goods floating super Mare, & eject' super littora Maris; For though they may hold Plea de Flotsam, yet they cannot hold Plea of Wreck; and this is Wreck when it is thrown upon the Land. Tr. 5 Ja. B. a Prohibition granted accordingly, and a Consultation denied.

A suit was in the Admiralty for taking of Goods Circa Capé de Vert super altum Mare. It was moved for a Prohibition

7. They cannot hold Plea of a Contract made in Portu Middleburgh, because this is not upon the Sea, Hill. 8 Ja. B. *Vanheg's* Case, per Curiam præter Warburton, Coke said, that there is a Precedent in 25 H. 6. and 36 H. 6. where there was a Ship riding in a Port, and a Contract was there made, and a suit for it in the Court of Admiralty; and therefore an Action was brought at Common-Law, and 13000 l. Damages recovered, the Duke of Exeter then being Admiral.

because it was in the Port of Genney when they were at Anchor there, and every Port is within the Body

Body of the Land and not upon the Salt Sea; Coke Ch. J. ſaid that peradventure the Ports there are not as the Havens are with us; and Doderidge ſaid that there is not any Port but there are Roads, but they are not within the Body of the Land but are in the Sea, and they might be at Anchor in the Sea, and therefore a Prohibition was denied; But Coke ſaid that if this had been within the Body of the Land, the Admiral ought not to hold Plea of it. Roll Rep. 250 pl. 18. Mich. 13 Jac. B. R. Willets v. Newport.

8. If Pirates take Goods upon the Sea from a Subject of Spain, and and bring them within a Port of Ireland, and there ſell them to J. S. **no Suit for theſe Goods can be againſt J. S. in the Court of Admiralty; for that** J. S. came to them by purchaſe within the Body of the County. **Mich. 13 (*) Jac. B. between** *Don Diego* **the Ambaſſador, and** *Sir Richard Bingly*, **reſolved, and a Prohibition granted; For the Owner of the Goods may have an Action of Trover for the Goods at Common Law.** * Fol. 232 See (C.) pl. 4. S. C. and the Notes there.

9. If a Subject of **the King of** Spain committs **certain** Offences in Spain, **for which** his Goods are confiſcated, and **after** comes into England, and brings with him ſome of the Goods, and ſells them to J. S. a Subject of this Realm, **and after the** Ambaſſador of Spain ſues in the Admiralty-Court **upon this matter**, and there attaches the Goods in the Hands of J. S. **a Prohibition lies; for the property of the Goods ſhall not be queſtioned in any Court, but at Common Law. Hobart's Reports, Caſe 267. Don Alphonſo and Cornero.** See (B.) pl 6. and the Notes there.

10. If a Contract or Obligation **be** made upon the Sea, **yet if it be** not for a Marine Cauſe, **the Suit upon this Contract or Obligation ſhall be at Common Law, and not in the Admiralty Court; For if a Man makes an Obligation for the ſecurity of a Debt growing before upon the Land, or if he make a promiſe to pay it, this cannot be ſued in the Court of Admiralty, but at Common Law. Hobart's Reports, 17. Bridgman's Caſe.** Hob 12. pl. 23. S. P. by Hobart Ch. J. in Bridgman's Caſe. —— Roll Rep. 133. pl. 10. S. P. cited to have been ruled accordingly, in C. B. Paſch. 13 Jac. and the Court was of the ſame Opinion.

11. If a Contract **be made** upon the Sea for the bringing over certain Sugars, **and** after this Agreement is put in Writing upon the Land, **and after** the Sugars in bringing over are ſpoiled upon the Sea, **yet the Suit for this does not lie in the Admiralty Court, becauſe, the putting the Agreement in Writing upon the Land, changes the Juriſdiction as to this; and then when the Contract is upon the Land, though the Breach be upon the Sea, yet the Common Law ſhall have the Juriſdiction, and not the Admiralty Court. Hobart's Reports, between** *Palmer and Pope*, **Caſe 268.** Hob. 79. pl. 104 and ibid. 212. pl. 270. S. C & S. P. ——See (A. 2) pl. 3. S. C and the Notes there.—— (B) pl. 1. S. C. & S. P.

——If part of the Matter be done upon the Sea and Part in a County, the Common Law ſhall have all the Juriſdiction. 12 Rep. 79. Hill. 8 Jac. by the Reporter.

12. If a Contract **be made** upon the Sea, **and** the Cauſe of the ſuit Maritime, **and a** Suit is had upon this in the Admiralty Court, **it ſeems** it is ſufficient to alledge it to be made within the Juriſdiction of the Court, without ſaying **it was made** ſuper Altum Mare; **for this may be alledged of the other Part to have a Prohibition, if it was not made ſuper altum Mare. Contra Hobart's Reports, Caſe 269.** Hob. 213. pl. 270. Mich. 9 Jac. Hobart Ch. J. ſays, Note that every Libel in the Admiralty doth and muſt lay the cauſe of Suit ſuper altum Mare, which argues that this is a neceſſary Point; For the Juriſdiction there groweth not from the cauſe of Tithes and Teſtaments in the Spiritual Court, but from the Place. And therefore he was of Opinion, that if a Contract were made in Truth at Sea, and a ſuit upon that in the Admiral's Court, and there the Contract is laid generally, without ſaying ſuper altum

tum Mare the Prohibition will lie; For the Libel muſt warrant the Suit in it ſelf though you may on the contrary Part ſurmiſe, that the Contract was made at Land, againſt the Libel that lays it on the Sea. And he held it alſo not ſufficient for the Libel not to lay it infra Jur. Mar. generally, but it muſt be ſo laid as it may appear to the Kings Court, to be ſo indeed.

* It muſt be tried in London See tit. Trial (B) pl 1. S. C.

13. If a Man contracts with me in London, in conſideration of 100 l. to tranſport certain Commodities into Turkey, if he does not perform it, I cannot ſue him in the Court of Admiralty, becauſe the Contract was here, and nothing done upon the Sea. P. 1 Ja. in * *Banning's* Caſe ſo held ‡ 1 R. 3. 4.

‡ Fitzh. Trial pl. 29. cites S. C.

Roll Rep. 285. pl. 1 S. C. a Prohibition was granted; For though the Admiral had a Grant De Bonis Piratarum, yet that muſt be intended of the Proper Goods of the Pirates, and not thoſe which the Pirates ſtole from other Men; For thoſe are not to be granted, becauſe the Owners ought to have them again; But if the Admiral was intitled to ſuch Goods, yet in this Caſe he ought not to ſue in the Admiralty; becauſe the Sails and Tackling were taken Infra Corpus Comitatus; viz. upon the Thames and here the Ship is not forfeited for the Piracy of thoſe that were in it; Per Doderidge J. quod Coke Ch. J conceſſit.——3 Bulſt. 147, 148. Mich. 13. Jac Prinſton v. The Admiralty Court, S. P. and ſeems to be S. C. and ruled accordingly, and Coke Ch. J. ſaid that ſo was the Opinion of the Court when he was Attorney General.——Jenk. 325. pl. 40. Primiſlaus's Caſe.

14. If the Owner of the Ship ſends it to the Indies to merchandize, and upon the High Seas the Mariners and the reſt in the Ship commit Piracy, when the Ship after returns here upon the Thames, the Admiral ſeizes the Ship and all in her as Bona Piratarum, claiming them by grant of the King, for by the Law of the Sea the Owner in ſuch Caſe ſhall loſe the Ship; and after the ſeizure the Owner of the Ship takes the Sails and Tackling out of the Ship, for which the Admiral ſues in the Admiralty Court, a Prohibition ſhall be granted, becauſe if it be forfeited he may have an Action at the Common Law for the taking and not there, they being taken infra Corpus Comitatus. H. 13 Ja. B. R. *Hildebrand's et al'.* Caſe reſolved, and a Prohibition granted.

15. If a Contract be made in London for Things lye upon the Sea Coaſts, and there is a ſuit for this in the Court of Admiralty, a Prohibition lies. H. 7 Ja. B. adjudged between Sarah Selden and others.

* Fol. 533. 2 Roll Rep. 486. Slany v Maldonado. S. C. ——4 Inſt. 135. Cap 22. S.P. in the Anſwer to the 4th Objection.

16. If a Charter-party be made in England, to do certain Things in ſeveral Places upon the Sea, tho' no Act is to be done in England, (*) but all upon the Sea, yet no ſuit can be in the Admiralty Court, for the Non-performance of the Agreement; For the Contract is the Original, without which no Cauſe of ſuit can be, and this Contract is out of their Juriſdiction, and where part is triable by the Common Law, and part by the Admiral Law, the Common ſhall be preferred. Mich. 22 Ja. B. R. between *Maldonado and Slany*, reſolved, and Prohibition granted upon Debate.

And. Ibid. 138, 139. S. P. cites Mich. 31 H. 6. Rot. 215. Hore v. Unton. And Ibid. 141. 142 cites Paſch 28 Eliz. B. R. Conſtantine v. Gynne, S. P.——Mo. 450 pl. 612. Paſch. 38 Eliz C. B. Turner v. Oldfield, a Prohibition to the Admiralty, becauſe libelled they in the Admiral Court upon a Charter Party to have the 3d Parts of Goods taken upon the Sea by Letters of Mart, whereas the Matter was triable upon the Land, and not in the Admiralty by reaſon of the Indenture of Charter-Party; Et adjornatur. Quære.

If Floſam comes to Land and is taken there by him who has no Title, the Action ſhall be brought at the Common Law and no Proceedings ſhall be thereon in the Court of Admiralty;

17. If a Man takes a Maſt floating upon the Sea, and draws it upon the Shore, where J. S. takes it, claiming there Admiralty Juriſdiction, an Action does not lie againſt him for this in the Court of Admiralty, but at Common Law, becauſe the Tort was done upon the Land. Mich. 10 Ja. B. Mayor of *Harwich's* Caſe, per Curiam.

Admiralty; For there is no need of Condemnation thereof as there is of Prizes; Per tot. Cur 2 Mod. 294. Hill 29 & 30 Car. 2. C. B. The Lady Windham's Caſe.——[The Original is, ſhall (not) be brought which ſeems miſprinted.]

18. But if a Man takes a Thing upon the Sea, and brings it to Land, and carries it away, the Suit for this ſhall be in the Admiralty Court, for this is a continued Act. Mich. 10 Jac. B. Mayor of *Harwich's* Caſe, per Curiam. 4 Inſt. 140. cites Temps E. 1. avowry 192. S. P. and ſays, that when a taking is partly on the Sea and partly in a River, the Common Law ſhall have Juriſdiction.

19. If a Shipwright ſues in the Admiralty Court for the making a Ship for Navigation upon the Sea, a Prohibition does not lie. P. 9 Car. B. R. between *Tasker and Gale*, per Curiam agreed. So if for the amending, ſaving, or neceſſary victualing of a Ship, if againſt the Ship itſelf, and not againſt the Party by Name, but only againſt ſuch as for his Intereſt makes himſelf a Party. 2 Danv. 270 cites Cro. C. 296. [and the Table of Cro. Car. Tit. Admiralty, refers to Fol. 296, 297. but I cannot find any thing relating to the Admiralty there, or thereabouts, and the only Place it refers to beſides, is Fol. 603. but the S. P. is not there neither. So Quære where the Point is to be found.]

20. But if a Suit be in the Admiralty Court for making a Lighter for the Carriage of Mud, or the like, within the Body of the County upon the Thames, and not for Navigation, a Prohibition lies. P. 9 Car. B. R. between *Tasker and Gale*, per Curiam agreed.

21. If the Suit be in the Admiralty Court upon a Charter-party for Demurrage, or for * Mariner's Wages, but not for any Penalty within the Charter, but only for the Wages contracted for, or for Demurrage, according to the Contract, no Prohibition lies. P. 9 Car. B. R. ſaid per Curiam to be ſo lately reſolved by all the Judges of England. * 4 Inſt. 141. cap. 22 cites 48 E. 3. 3. that if a Mariner makes a Covenant to ſerve in a Ship upon the Sea, yet if the Wages be not paid, it ſhall be ſued for in this Court by the Common Law, and not by the Law of Mariners. ——— Raym. 3. Hill. 12 Car. 2. B. R. in the Caſe of Woodward v. Bonithan, Arg. inſiſted, that of Mariners Wages the Admiralty ſhall have the Conuſance of it; and ſo it was agreed by all the Juſtices, Hill 8 Car. 1. 1 Cro. and of this Opinion was Mallet J. But Forſter Ch. J. and Twiſden J. held a Prohibition would well lie, for the Statute of 15 R. 2. cap. 3. was made at the great Complaint of the Commons, and ſhould therfore be conſtrued moſt beneficially for the good of the Subject; and when the Ordinances and Orders in the Time of the late Troubles were made, the conſtant and generally received Opinions were, that for Mariners Wages &c. the Parties could not ſue in the Admiralty, and for that reaſon pretended Orders were made on 12 April, 1648. cap. 11. and another 23 April, 1649. cap 21. to enable the Admiralty to hold Plea of ſuch Things; and as to that Caſe of 8 Car. 1. they ſaid, that that had not only been denied by ſeveral other Judges as well as by themſelves at this Time, but had been renounced even by ſeveral of thoſe Judges who are ſaid to have ſubſcribed to it, for which reaſon a Prohibition was granted.

22. If A. a Merchant in London, writes to his Factor in France to buy Wines for him there, and to ſend them to him to London, and to charge him for the Payment thereof with Bills of Exchange to be paid in London, and the Factor does accordingly, and after A. hath received the Wines in London, and accepted the Bills in London, he dies before the Day of Payment of the Money by the Bills, and after the Bills for Non-payment are proteſted in London, and after ſent into France, where the Factor is compelled to pay them, in this Caſe no Suit can be upon this Matter againſt the Executor of A. in the Court of Admiralty, for that this Contract had its Original in London, ſcilicet, the writing the Letter, and the Acceptance of the Goods and Bills of Exchange in London makes the Contract compleat, and therefore this Contract is to be tried at Common Law. Hill. 14 Car. B. R. between *Haywood and Anne Davyes*, a Prohibition granted per Curiam, and upon Complaint thereof to the King by ſome of the Admiralty Court, a Meeting and Conference, and

and Debate thereof was at Serjeant's-Inn between *Sir Henry Martyn* and the Judges of the King's-Bench, where Counsel was held for Anne Davyes, and Dr. Zouch for the other Side; and the Court inclined clearly that the Prohibition lies, but ordered, that the Prohibition should not issue, if in the Admiralty they would deliver Anne Davyes upon Bail for her Appearance the next Term; but if they would not deliver her, then the Prohibition should issue.

23. The Court of Admiralty hath no Cognizance of *Things done bedone beyond Sea*, and this appears plainly by the Statute of 13 *R.* 2. *cap.* 5. the Words of which Statute are, that the Admirals and their Deputies shall not meddle from henceforth of any thing done within the Realm, but only of a Thing done upon the Sea, cites 19 H. 6. fol. 7. for Things transitory done beyond the Seas, are either triable in the King's Courts, or the Party grieved may have his Remedy before the Justices where the Fact was done beyond Seas. Resolved in C. B. 12 Rep. 103, 104. Hill. 2 Jac. Tomlinson v. Philips.

Ow. 122. Leigh v. Burley, S. C. and the Libel was for Goods bought of a Salesman at St. Katherine's near the Tower, who delivered them on board the Defendant's Ship there, but a Prohibition was granted, because this Contract was made on Land, & Infra Corpus Comitatus, and therefore the Admiral has no Jurisdiction. ——— S. C. cited 2 Show. 338. in pl. 347.

24. C. *bought* divers *Things within the Body of the County which concerned the furnishing of a Ship*, as *Cordage*, *Powder and Shot*, and the Party of whom they were bought sued C. for the Money in the Admiral Court, and Prohibition was granted; for the *Statute of R. 2. is*, that the Admiral shall not meddle with Things done within the Realm, but only of Things done upon the Sea, and that no Contract made upon the Land shall be held there. 2 Brownl. 37. Mich. 7 Jac. Cradock's Case.

25 Libel in the Admiralty upon a *Contract made at Marseilles in France*; Fleming Ch. J. denied to grant a Prohibition; For though the Admiralty Court has nothing to do with this Matter, yet since this Court cannot hold Plea of it, (the Contract being made in France) no Prohibition lies. But Yelverton and Williams J. e contra, that the Admiral has no Jurisdiction, and that *the Contract may be laid to be made at Marseilles in Kent or Norfolk, or any other County*, and so triable here. 2 Brownl. 11. Mich. 8 Jac. B. R. Anon.

26. The *Plaintiff was in Execution upon a Judgment* obtained *in the Admiralty* against him *upon a Contract made on Land in New-England*, and this appearing upon a Bill exhibited against the now Defendant, upon the Statute 2 H. 4. cap. 11. for suing in the Admiralty upon a Contract made at Land, which the Court held to be Coram non Judice, and he was discharged. Cro. Car. 603. pl. 8. Hill. 16 Car. B. R. Ball v. Trelawny.

27. Wild moved for a *Prohibition* to the Court of Admiralty *to stay a Trial there in a Trover and Conversion*, in which they proceeded *upon a Pretence that the Goods were taken upon the High Sea*, and that by the late Act they have Exclusive Power in all such Cases which is not so. Glyn Ch. J. said, it was resolved in **Creemer and Cokelye's Case**, and so adjudged that they have no such Power; therefore take a Prohibition Nisi &c. Sty. 470. Mich. 1655. Lepool v. Tryan.

28. A Dutch *Ship* being *wreck'd by Tempest in a Creek of the Sea Infra Corpus Comitatus* of Dorset. The *Sailors*, *upon Pretence that the Goods in the Ship were Bona peritura, procured a Commission of Sale out of the Admiralty*

miralty Court ; whereupon *the true Owners, to prevent ſuch Sale, brought a Superſedeas* ; and upon producing the Libel to the Court, a Prohibition was prayed and granted, becauſe the Cauſe of Action did ariſe Infra Corpus Comitatus, and ſo the Admiralty cannot hold Plea thereof, and *the Sale* of theſe Goods *is good* as they are Bona peritura. 2 Sid. 81. Trin. 1658. B. R. Culliver v. Brand.

30. In a Prohibition the Caſe was, the Defendant was *Maſter of a Ship*, of which S. the Plaintiff was Owner, and the *Ship* was *taken by Pirates upon the Sea, and to redeem himſelf and the Ship he contracted with the Pirates to pay* 50 l. *and pawned his Perſon for it.* The *Pirate carried him to the Iſle of Scilly, and there he borrowed the* 50 *l. for which he gave Bond, and paid the Pirate* ; and being diſcharged, he libelled in the Admiralty for the 50 l. At his Return he ſued in the Admiralty for rhe 50 l. and had a Sentence for it. The Owner moved for a Prohibition, but it was denied, becauſe the original Cauſe aroſe on the Sea, and all which followed was but acceſſary and conſequential to that Cauſe, and therefore well determinable in the Court of Admiralty. Hard. 183. Paſch. 13 Car. 2. in Scacc. Spark v. Stafford.

31. Suit in the Admiralty for a Ship, as Flotſam, left near an Harbour in Norfolk ; It was agreed that Flotſam ſhould be tried in the Admiralty, but becauſe the *Suggeſtion was, that the Dereliction was Infra Corpus Comitatus*, a Prohibition was granted ; for *they may take Iſſue upon the Suggeſtion* ; and if it be found to be out of the County a Conſultation ſhall go. Sid. 178. pl. 9. Hill. 15 & 16 Car. 2. B. R. The Ld. Admiral v. Linſted.

Keb. 657. pl. 39. the Duke of York v. Linſtred, S. C. the Court agreed, that Floatſam properly belongs to the Admiral, and that they may try it whether it be ſo or no; but this Suggeſtion being of a Dereliction within the Body of the County, it ought to be tried by Jury, and the Decree in the Admiralty will be allowed a good Plea in Trover for it; And by Windham, *Floatſam is* that which is totally derelict, and not that which is avoided in the Sea for Fear of Danger, to which the Owner has ſtill an Eye, and only goes out to pray for Help, which Twiſden agreed, but this is triable by the Admiral; and the Claim of Property by the Party muſt be in the Admiralty within the Year and Day. Keeling conceived, that Floatſam within the County is of the Admiral's Juriſdiction divided with the Common Law, but here an Owner appears within the Record within the Year and Day, and therefore they ought here to demur or take Iſſue on the Suggeſtion. No Prohibition was awarded but only as to the Fact in Corpore Comitatus.

32. A *Libel* was againſt a Ship and the Maſter, and alſo againſt the former Owner, and the now Owner, *for Sails and other Neceſſaries found for the Ship* in 1681. The *Plaintiff* (the now Owner) *for a Prohibition ſuggeſts the Statute R. 2. and that the Materials, Work done, and Contract made, and every Thing contained in the Libel, were done at Land*, and not Super Altum Mare, *and that after the Time ſpecified in the Libel, the Plaintiff bought the Ship, cum omni Apparatu*, for a conſiderable Sum of Money, *at Land.* It was argued, that though the Sails were for the Ship, and done about it, yet they were not abſolutely neceſſary, nor was it in a Voyage, ſo that the Libel is not for any ſuppoſed Hypothecation by the Maſter in a Time and Caſe of urgent Neceſſity; beſides, the Buying was upon Land with all her Furniture, and the Defendant has his Action at Law upon his Contract, and for his Wares ſold ; and a Prohibition was granted as to the Ship and the preſent Owner &c. 2 Show. 338. pl. 347. Hill. 35 & 36 Car. 2. B. R. Hoare v. Clement.

33. The *Maſter* had *hypothecated a Ship for Neceſſaries*, being *upon the Sea in Streſs of Weather.* It was ſuggeſted for a Prohibition, that the Agreement was made, and the Money lent, upon the Land, viz. in the Port of London. But by Holt Ch. J. this muſt neceſſarily be ſo; for if a Man be in Diſtreſs upon the Sea, and compelled to go into Port, he muſt receive the Money there or not at all ; and if his Ship be impair'd by Tempeſt, ſo that he is forced to borrow Money to prevent

her being loſt, and pledges his Ship for Security, *ſince the Cauſe of the Pledging ariſes upon the Sea, the Suit may well be in the Admiralty Court*; But becauſe there was a Precedent where a Prohibition was granted, the Court granted one Now, and ordered the Plaintiff to declare upon it; for the Law ſeemed clear to them as aforeſaid. Ld. Raym. Rep. 152. Hill. 8 & 9 W. 3. Benzen v. Jeffries.

(E. 2) Puniſhment of ſuing in the Admiralty in Caſes out of their Juriſdiction.

An *Action* was brought upon this Statute for ſuing in the Admiralty *upon an Hypothecation*, and it was held to be out of the Statute in the Time of my Ld Hale, cited by Holt Ch. J. Ld. Raym. Rep. 152. Hill. 8 & 9 W. 3. in Caſe of Benzen v. Jeffries.

1. 2 *H.* 4. *cap.* 11. IF *any Perſon ſhall be proſecuted in the Admiral's Court, contrary to the* 13 *R.* 2. *cap.* 5. *he ſhall have an Action of the Caſe againſt the Proſecutor, and recover double Damages, and the Proſecutor ſhall forfeit* 10 *l. to the King.*

2. *In Writ on the Caſe founded on the Statute of* 2 *R.* 2. *or* 15 *R.* 2. *or* 2 *H.* 4. *againſt ſuch as hold Pleas before the Admiral of Contracts made upon the Land* &c. the Plaintiff *ought to ſay* in his Writ, *Contra Formam Statuti prædict.* otherwiſe it is not good, and it ought to be *brought in the County where the Plea was held before the Admiral*, and not in the County where the Contract was ſuppos'd to be made. Bendl. 57. pl. 92. Paſch. & Trin. 4 & 5 P. & M. Maſhender's Caſe.

Bendl. 64. pl. 111. S. C. but S. P. does not appear.

3. *P. and R. bought a Ship at Land of B. and ſued B. upon the Contract in the Admiralty* Court, and for their ſuing in the Admiralty Court *B. brought an Action againſt P. only, and held good.* D. 159. b. pl. 37. Paſch. 4 & 5. P. & M. Bylota v. Pointel.

S. C cited Arg. 4 Mod. 180, 181. in Caſe of Sands v. Child.

4. *A. and B. ſued C. and D. in the Admiralty for a Cauſe ariſing at Land. A. died.* The *King and C.* one of the Perſons grieved *brought an Action againſt B.* one of the Proſecutors, *without ſhewing the Death of A.* The *Judgment was*, that the Party grieved recuperet Damnum & quod Defendens Pœnam 10 l. erga Regem per Statut' prædict' incurrat & capiatur & quod Dominus Rex recuperet verſus Defendent' 10 l. &c. & Defend' capiatur. D. 159. b. pl. 38. cites 1 Eliz. Swanton v. Willet.

5. An Action on the *Caſe* was brought *for ſuing in the Admiralty* Court, in a Cauſe where they had no Juriſdiction, (viz.) for a Thing done on the Land, and not on the High Sea. Brownl. 4. Mich. 11 Jac. Row v. Alport.

3 Bulſt. 205. S. C. adjudg'd in B. R. and ſo a Judgment in C. B. affirm'd.

6. Caſe &c. on the Statute, 2 H. 4. cap. 11. for ſuing in the Admiralty for a Matter done at Land, wherein the Plaintiff ſet forth, that he was attached in that Court, *pro Defalcatione of his Oar infra fluxum & refluxum Maris, when in Truth, if any Thing was done, it was done in ſuch a Place which was infra Corpus Comitatus, and that he was attached to appear before one Crumpton, Deputy-preſident or Judge of the Court* &c. After a Verdict for the Plaintiff, and a Writ of Error brought, it was aſſigned for Error, that the Declaration was ill, becauſe the Plaintiff had ſet forth, that *if any Thing was done*, it was infra Corpus Comitatus &c. which is *not a direct Affirmation*, that it was done infra Corpus Comitatus; But per Haughton if nothing was done at Land, yet a Suit in the Admiralty, ſuppoſing a Thing to be done at Sea where in Truth

no ſuch Thing was done is puniſhable by this Statute; Quod fuit conceſſum per Cur. Then it was objected that the Plaintiff ſet forth that he was attached to appear before one Crumpton, Lieutenant or Preſident to the Admiral Court, and did *not allege that it was before the Admiral or his Deputy*, as the Statute directs. But the Court held it well enough; For it is alleg'd that he was attach'd to appear Coram Crumpton Deputat' Præſidente ſeu ejus locum tenente, and after ſays, that he Comparuit coram Crumpton Deputat' Præſidente ſeu Judice of the Court. Roll Rep. 203. pl. 5. & 410. pl. 51. Trin. 14 Jac. B. R. Fleming v. Yate.

7. An *Action* doth lie *by the Statute againſt the Court of Admiralty for holding a Plea of a Matter* which is *not within their Juriſdiction*, (Mich. 22. Car. 1.) B. R. and juſtly; for every Juriſdiction ought to be kept within its own Bounds; And if any one be injured by tranſgreſſing therein, the Common Law will relieve the Party injured thereby, and cauſe Satisfaction to be made for this Injury. L. P. R. 17.

8. Plaintiff S. declared, ſetting forth the 13 R. 2. 15 R. 2. and 2 H. 4. c. 11. which gives the Party grieved double Damages, and 10 l. to the King; and that he was Owner of a Ship lying in the Thames infra Corpus Com. laden with divers Goods, wherein he had a 5th Part to his own Share; that the *Ship* was *ready to ſail*, and that the Defendant cauſed a Proceeding to be made in the Admiralty againſt the Ship, and the Ship to be *arreſted and ſtaid quouſque he gave Security not to go to the Mederas, or Eaſt Indies, whereby he* was ſtaid 3 Months, and *loſt his Voyage* ad dampnum 3000 l. On Non Culp. Jury found that the Eaſt India Company by Charter had the ſole Trade to the Eaſt Indies and Mederas, and that the Plaintiff was going thither; And Sir J. C one of the Defendants was Governor of the Company, and procured an *Order of Council to the King's Advocate General to proceed in this Manner* &c. and that the Defendants ſued this Proceſs out of the Court of Admiralty; and if pro Quer'. Jury find 1500 l. Damage, and 51 l. Coſts, which were doubled in the Judgment according to the Statute. Judgment for the Plaintiff in C. B. and now in Error brought it was agreed that though here was but one Act, and but one Offence, yet every ſeveral Perſon injured might have an Action and recover Damages, and upon every Conviction the Defendant would forfeit 10 l. to the King. Though there be a Proceſs only and no Suit, nor no Plaintiff and Defendant, yet this is a Proſecution within the Meaning of the Statute, for it is an uſual proceeding there, and of the ſame Miſchief; That C. was a Proſecutor within the Statute though no Suit was in his Name, becauſe he promoted and maintained it; and if he did it of his own Head, then it is properly his own Action; if as Agent to the Company, and by their Command then that Command being to do an unlawful Act was void; But they held a mere Attorney would not be a Proſecutor within the Statute. Judgment affirmed. 1 Salk. 31, 32. pl. 2. Paſch. 5 W. & M. in B. R. Sir Joſiah Child & al'. v. Sands.

Skinn. 361. pl. 3. S. C. and Holt Ch. J. in delivering the Opinion of the Court, ſaid that there being not any Difficulty in the Caſe they would not argue it, but were all of Opinion that the Judgment ought to be affirm'd; For though the Suit, in the Admiralty was not againſt the Perſon, yet being there againſt his Goods according to the Courſe of Proceedings there, this is a Suit in the Admiralty within the Statute. And though the Defendant is not Party in Court, yet if he be the Perſon that moves the Suit and is the Cauſe of ſuch Charge and Trouble, an Action lies againſt him. ——— 4 Mod. 179. S. C. and Judgment affirm'd. ——— 3 Lev. 351. S. C. and Judgment affirm'd per tot. Cur. ——— Cumb. 215. S. C and Judgment affirmed. ——— Carth. 294. S. C. and Judgment affirmed.

(E. 3) Prohibition. In what Caſes. And at what Time.

1. SIR J. C. *Judge of the Admiralty exhibited a Bill in that Court againſt* the Defendant N. who was *an Officer of the Lord Mayor, for meaſuring Coals at a Wharfe in the Pariſh of St. Dunſtan's in the Eaſt upon the River Thames*; Wray and Gawdy Juſtices ſaid, that if it be Extortion there is no Remedy for it in the Admiralty, but in the King's Court; And per Gawdy it ſhall be redreſs'd here by a Quo Warranto. Le. 106. pl. 144. Paſch. 30 Eliz B. R. Sir Julius Cæſar's Caſe.

2. In a Caſe where *A. and A. were equally intitled by the Civil Law to a Prize-Ship*, A. as the actual Captor, and B. as being preſent, and *B. ſued* in the Admiralty *for his Moiety*, *A. for a Prohibition ſurmiſed that after their arrival in England they agreed* inter ſe that *A. ſhould have* 4 *Parts of* the ſaid Ship and Goods, *and that B. ſhould have the other* 5 Parts [*the other 5th Part*] and *A. ſaid that he pleaded this Matter in the Admiralty, and they would not allow the Plea*, whereupon a Prohibition was granted; but it afterwards was moved by B. that the Court of Admiralty would allow the Plea and try it there, whereupon a *conditional Conſultation was granted, Ita quod the Court allow that Plea* and try it there; And it was ſaid, that if the Court ſhould not allow the Plea it would be a Contempt of this Court and a Prohibition ſhould be granted. 2 Le. 182. pl. 224. 32 Eliz. C. B. Somers v. Buckley.

3. A Suit was in the Admiralty Court for *ſetting a Ship in a Wharf* to the Damage of the Plaintiff; *ſo that none could come to his Wharf which is ſaid within the Bill to be within the Ward of St. Mary-Hill*; And a Prohibition was granted; Upon a Suggeſtion, that it was good for the ordering of Ships. A Conſultation was granted, but afterwards upon good Advice and opening the Matter, a Superſedeas to the Conſultation was granted et quod Prohibitio ſtet; For the Wrong and Fact is ſaid to be within a County and Ward; And for that it does not belong to the Admiral; And for civil Contracts or Treſpaſs done upon the River Thames or any other River, that is proper to the Common Law, triable in that County, which is next to the Bank, and that ſide of the River where the Fact was done, but in criminal Matters upon any River, that is given to the Admiral by the Statute 28 H. 8. cap. 15. Noy. 148. Goodwin v. Tompkins.

4. The *Maſter of an Hamborough Veſſel freighted her at Brazil, and became bound in the Cuſtom Houſe there to unload the Merchandizes according to the Manner there uſed at St. Michael's to the Intent to ſatisfy the King's Cuſtoms. The Ship was drove by Tempeſt on the Coaſt of England*, ſo that ſhe could not touch at St. Michael's. The Spaniſh Ambaſſador ſuppoſing the Goods were forfeited to the King of Spain for not paying Cuſtoms ſued in the Admiralty here, and *the Court gave Sentence, that the King of Spain ſhould have the Poſſeſſion of the Goods, but did not determine the Intereſt and Right* of them. Whereupon the Owner ſued to the Lord Chancellor for an Appeal, which was oppoſed by the Judge of the Admiralty, and it was argued by Civilians on both Sides, but Ld. Chancellor fetch'd a Civil Law Book out of his Cloſet in which was a Text preciſe that an *Appeal lies as well where the Sentence is of the Poſſeſſion as where it is upon the Intereſt and Right*. Mo. 814. pl. 1102. Mich. 8 Jac. Spaniſh Ambaſſador v. Plage

5. In all Caſes *where the Defendant admits the Juriſdiction* of the Admiral Court *by pleading there*, a Prohibition ſhall not be granted, unleſs it *appears by the Libel that the Act was done out of their Juriſdiction*; And that

that though Sentence was given, yet if that appears within the Libel a Prohibition ſhall be granted; Agreed. 2 Brownl. 30. Mich. 9 Jac. C. B. in Caſe of Jennings v. Audley.

6. A Suit was in the Admiralty *on a Charter Party made beyond Sea on the Land*; a Prohibition was granted, becauſe not made on the Main Sea. But *if the Defendant admits the Juriſdiction* of the Court, *and ſuffers Sentence*, then *B. R. will not on a bare Surmiſe grant a Prohibition after Admittance of the Party himſelf, unleſs it appears in the Libel, that that the Act was not made within the Juriſdiction* of the Sea; and the Court agreed to this Difference. 2 Brownl. 34. Mich. 1611. 9 Jac. C. B. obiter.

7. A *Libel* was brought *by ſeveral Mariners againſt J. the Maſter* of a Ship, and *Judgment being given againſt J. he ſuggeſted for a Prohibition that the Contract was made at L. in England*, but a Prohibition was denied, becauſe he had not ſued his Prohibition in due Time, viz. before a Judgment in the Admiral Court, but if they ſue here they muſt bring their Actions ſeveral, becauſe they cannot join here in an Action, and therefore it is good Diſcretion in the Court to deny a Prohibition. Win. 8. Paſch. 19 Jac. Jones's Caſe.

So where a *Contract was on Land with ſeveral ſeamen to bring a Ship from a Port of England to London for a certain Sum* to them to be paid, a Prohibition was denied; For *this muſt be taken as Mariner's Wages*, and therefore they have Juriſdiction; Beſides the Party comes after Sentence, and therefore it is in the Court's Diſcretion to grant a Prohibition or not. Vent. 343. Mich. 31 Car. 2. B. R. Anon.——A Prohibition ſhall not go to the Admiralty to ſtay a Suit there for Mariner's Wages, though the Contract were upon the Land. For, 1ſt. It is more Convenient for them to ſue here, becauſe they may all join And according to their Law, if the Ship periſh by the Mariner's Default, they are to loſe their Wages, therefore in this ſpecial Caſe the Suit ſhall be ſuffer'd to proceed there. Vent. 146. Trin 23. Car. 2. B. R. Anon.——3 Mod. 244. Arg cites Win. 8. but ſays the Reaſon of denying Prohibitions for Mariners Wages ſeems to be becauſe they proceed in the Admiralty not upon any Contract at Land, but upon the Merits of the Service at Sea and allow or deduct the Wages according to the good or bad Performance of the Services in the Voyage. And Ibid. 245. S. P. admitted by the Counſel of the other Side; but ſays, that the principal Reaſon of ſuing in the Admiralty for Mariner's Wages is, becauſe the Ship is liable as well as the Maſter who may be poor and not able to pay the Seamen. Mich. 4 Jac. 2. B. R. Anon.

8. A *Dunkirker took a Frenchman's Ship at Sea, and before it was brought Infra Præſidia of the King of Spain, it was driven by contrary Winds to Weymouth in England, and there the Ship and Goods were ſold*; the Frenchman libell'd in the Admiralty Court pro intereſſe ſuo againſt the Vendee, ſuggeſting that the Ship &c. was taken by Piracy, and not by Letters of Mart as was pretended, and pray'd a Prohibition. Bankes Ch. J. and Foſter J. conceiv'd that a Prohibition ſhould go; but Crawley J. e contra. But all agreed; (Reeve J. abſente) that if a Ship be taken by Piracy, or if by Letters of Mart, and be not brought Infra Præſidia of that King by whoſe Subject it was taken, it is no lawful Prize, and the Property not alter'd, and therefore the Sale void. March. 110. pl. 188. Trin. 17 Car. Anon.

9. There was a Suit in the Admiralty for the *Profits of the Beaconage of a Rock* in the Sea, near in Cornwall, and upon a motion for a Prohibition it was denied, for the Profits of Beaconage belong to the Admiral, and by Conſequence the Suit for theſe Profits may be within the Court of the Admiralty, tho' the Beacon itſelf may be the Inheritance of any private Perſon, and impleadable in the King's Courts. Sid. 158. pl. 10. Paſch. 15 Car. 2. B. R. Croſſe v. Diggs.

10. *We being at War with Denmark*, one M. *a Scots Privateer, took a Daniſh Ship as Prize, which was condemned as a Prize in Scotland, and afterwards was bought by T. at Land*, whereupon *S. libell'd* in the Admiralty *here againſt T. and M. and ſhew'd* that M. took the Ship, *and that ſhe was not a Daniſh Ship but a Ship of London and that ſhe was loaded with his Goods*. T. moved for a Prohibition becauſe he claiming Property

2 Keb. 158. pl. 44 and 176. pl. 66. S. C. the Court held that the Defendant

here h s no Property, but by the Sale, and the only Queſtion will be Prize or No Prize, and therefore they would ſtay Nothing nor award a Prohibition.——S. C. cited by Holt Ch. J. Comb. 444.

perty which he acquired on the Land, the Admiralty had no Juriſdiction, eſpecially as this goes in Nullity of the Proceedings in Scotland, where the Court of Admiralty there has as great Juriſdiction as the Admiralty here; But per Cur. ſince the queſtion is Prize or No Prize no Prohibition ſhall go. Sid. 320. pl. 12. Hill. 18 & 19 Car. 2. B. R. Thompſon v. Smith.

2 Keb. 200. pl. 32. S. C. the Court held that there was no Cauſe of Prohibition after Sentence executed, nor Nothing that can be Prohibited.——Ibid. 215. pl. 55. S. C. the Court inclined that no Prohibition lay but after the Parties agreed.—— Ibid. 227. pl. 88. S. C. The Parties agreed to ſtay the Suit in the Admiralty, and the Defendant here to appear and take a Declaration in an Aſſumpit, for the Money receiv'd for the Seamen's Wages.

11. *Libel* was in the Admiralty *againſt* 2 *for Mariners Wages*, and there was *Sentence and Execution againſt one* of them, and *he paid the Money*, and now they *both mov'd for a Prohibition* upon a Suggeſtion that the Contract was made at Land; it was denied as to him who had paid the Money, becauſe at that Rate one may have Prohibition ſeven Years after Sentence which is not reaſonable, but granted as to the other. Sid. 331. pl. 14. Paſch. 19 Car. 2. B. R. Walker v. Adams.

Lev. 243. Turner v. Neale, S. C. but not exactly S. P. ——2 Keb. 360. pl. 4. and 364. pl. 16. Turner v. Neats S. C. but not exactly S. P.

12. A *Ship* was *taken* at Sea *as Prize*, and being brought near the Shore *was ſtranded*, but the Foreigners from whom it was taken libell'd in the Admiralty Court, upon *ſuggeſtion that it* was *not Prize*. After ſeveral Debates the Court held that no Prohibition ſhould go, becauſe the taking was the Cauſe of this Suit, the which was within the Juriſdiction of the Admiralty. Sid. 367. pl. 3. Trin. 20 Car. 2. B. R. Turner & al'. v. Smith.

13. *M. was Captain of a private Man of War, in which B. had an Intereſt, and M. took a Merchant Ship beyond the Line, laden with divers Merchandizes, B. ſued M. in the Court of Admiralty to have an Account, M. pleaded there the Statute of* 21 *Jac.* 1. *of Limitations*, the Cauſe of Action being of more than 7 Years ſtanding before the Suit commenced as appeared by the Libel. And now M. ſuggeſted that the Court of Admiralty would not receive that Plea, and therefore prayed a Prohibition. And the Court held that the Plea ought to have been receiv'd, for that *the ſaid Statute was pleadable there*; And if it were not received, that the rejecting it was a good Cauſe to have a Prohibition, as likewiſe if they receive it, and do not give Sentence thereupon, as the Common Law requires. But a Prohibition lies not before refuſal, becauſe the original Matter is examinable there. Hard. 502. pl. 8 Mich. 20 Car. 2. in Scaccario. Berkeley v. Morrice.

14 A Prohibition is prayed to the Admiralty in *Suit by the Maſter and Mariners for Wages*, which the Court denied, albeit the Mariners were retained by the Maſter, unleſs it be *by Charter Party of Affraight*, nor has it ever been granted, and the Rule for Prohibition was diſcharged. 2 Keb. 779. pl. 6. Trin. 23 Car. 2. B. R. The King v. Pike.

Skinn. 59. Mich. 34 Car. 2 B. R. Hughs v. Cornelius S. C. ſays the Ship was Dutch

15. An *Engliſh Ship was taken by French Man of War under Colour of a Dutchman, and carried into France and there Condemned* by their Court of Admiralty *as a Dutch Prize*; afterwards *an Engliſh Merchant bought this Ship of the Frenchmen, and brought her into England*, where *the right Owner brought* an Action of *Trover* for the Ship againſt the Purchaſor; and all this Matter being found ſpecially, *the Defendant had Judgment*, becauſe

becauſe the Ship being legally condemned as Dutch Prize, this Court will give Credit to the Sentence of the Court of Admiralty in France; And take it to be according to Right, and will not examine their proceedings; for it would be very inconvenient if one Kingdom ſhould by peculiar Laws correct the Judgments and Proceedings of the Courts of another Kingdom. This was a Caſe cited by the Court. Carth. 32.

built, and after made an Engliſh Ship, the Maſter was Dutch, ſome of the Seamen Engliſh, and two Dutch. The Court would not ſuffer it to be argued, but ordered Judgment to be entered for the Plaintiff; For they ſaid that Sentences in Courts of Admiralty ought to bind generally according to Jus Gentium. And if the Merchant in this Caſe had received Wrong he ought to apply to the Admiralty and Council, this being a Matter of Government, and that the King if he ſaw Cauſe would ſend to his Ambaſſador Leiger in France who would take Care that Right ſhould be done, and that if Right be not done, then the King would grant Letters of Marque and Repriſal.———Raym. 473. S C. adjudged accordingly.———S. C. cited Arg. Show. 143.———S. C. cited Comb. 121. per Holt Ch. J.

16. If a *Man is taken on ſuſpicion of Piracy*, and a *Bill is preferred againſt him*, and the *Jury find Ignoramus*; *If the Court of Admiralty will not diſcharge him*, the Court of *King's Bench will* grant a Habeas Corpus, and if there be good Cauſe, diſcharge him or at leaſt take Bail for him. But if the Court ſuſpects that the Party is guilty, perhaps they may remand him; And therefore *in all Caſes, where the Admiralty legally have an Original, or a Concurrent Juriſdiction, the Courts above will be well informed before they will meddle.* Molloy 70. cap. 4. S. 31.

17. No Prohibition ſhall be granted where a *Libel* is *not brought into Court*; Per Cur. Comb. 136. Trin. 1 W. & M. in B. R. in Caſe of Corſet v. Huſely.

18. *Libel in* the Admiralty againſt the Maſter and Ship which lay in the River Thames, *for heedleſly running over another Ship*, the Defendant there mov'd for a Prohibition. The *Plaintiff informed the Court that the Defendant would not appear ſo that he could have no Action at Law*; And thereupon the Court refuſed to grant a Prohibition, unleſs the Defendant would appear and give Bail. 2 Salk. 548. pl. 3. Trin. 4 W. & M. in B. R. Wharton v. Pitts.

19. The *Ship was libelled againſt* in the Admiralty, *for that the Maſter being taken by a French Privateer, had ranſomed the Ship for* 300 *l. and had ſued for the Payment of it, and was carried Priſoner to Dunkirk, and the Money was not paid* &c. *and Sentence was given in the Admiralty againſt the Ship*; And upon Motion for a Prohibition it was denied by Holt Ch. J. then alone in Court, becauſe the taking and pledge being upon the High Sea, *the Ship by the Law of the Admiralty ſhall anſwer for the Redemption of the Maſter by his own Contract.* Ex relatione M'ri Place. Lord Raym. Rep. 22. Mich. 6 W. & M. Wilſon v. Bird.

20. One *B. by Letters of Marque &c. from the African Company, took a French Ship near Gambay, which he carried into Africa*, and the *Admiralty there condemned her as Prize*, afterwards *B. ſold the Ship at Land, and applied the Money to his own Uſe, and then coming into England was ſued in the Admiralty here for an Accompt.* After Sentence given againſt him, he Appealed, and mov'd for a Prohibition, but denied; For the Suit here is but on Execution of the firſt Sentence, by which the Ship is adjudg'd the King's Prize, and the Admiralty having Juriſdiction, their Sentence did bind the Property, and cannot be gainſaid till reverſed by Appeal. 1 Salk. 32. pl. 3. Trin. 9 W. 3. B. R. Broom's Caſe.

Comb. 444. The King v. Broom, S. C and B. pray'd a Prohibition, ſuggeſting that the Ship was taken Super Terram in Partibus tranſmarinis; but it was denied; *the Subſequent Converſion is to be coupled with it* ——5 Mod. 340 S. C. and it was further inſiſted for a Prohibition, that the Property being once veſted in the King by the Condemnation of the Ship as Prize, there can be ſuit in the Admiralty here afterwards; For if after ſuch Condemnation the Goods are converted, the King muſt bring an Action of Trover; and that this is a plain Action of Trover upon the

For per Holt Ch. J. *the Taking being at Sea*, that gives the Admiralty a Juriſdiction and

Face

Face of the Libel. But it was anſwer'd that *this Ship was taken without any Commiſſion or Letters of Mart*, and therefore it is a Perquiſite to the Admiralty, and B. is reſponſible to the King for Ship and Goods.——12 Mod 134 S. C and held that by Law of the Admiralty *the Property of a Ship taken without Letters of Mart veſts in the King upon the taking, and this upon the High Sea*, and therefore that which was taken was but in Truſt for the King and he, who took it, is but accountable to him; And for the Account and Breach of this Truſt the ſuit in the Admiralty is very proper. Now if the Party, that took this Ship, brought it to Land and there ſold it and converted it to his own Uſe, this makes him a Wrong-Doer ab Juitio, and Rule for a Prohibition was diſcharged.—Carth. 398, 399 S C. and Prohibition denied, becauſe the Admiralty had Juriſdiction of the Original Cauſe which was the Capture, on which the King's Title immediately accrued, and the Embezilment was immediately upon the Capture, and ſo all was but One continued Act; And this 2d Libel was but a Continuance of the firſt ſuit and a Charge grounded on the firſt Sentence by way of Execution thereof.

Carth. 423. Thermolin v. Sands S. C accordingly.—— Ld. Raym. Rep. 271.

21. A *Libel* in the Admiralty was *for the Caption of a Ship generally* without ſhewing that it was upon the High Sea, but the ſubſequent Proceedings did ſhew it. After Sentence in the Admiralty a Prohibition was mov'd for, but the Court was divided. Comb. 462. Mich. 9 W. 3. B. R. Tremoulin v. Sands.

Shermoulin v Sands S. C. accordingly, and ſo on Prohibition was granted ——12 Mod. 143. Terremoulin v. Sands S. C. the Court divided and ſo Rule for Prohibition was diſcharged.

22. B. R. will not prohibit *all the Mariners or any one* of them to *ſue in the Admiralty for their Wages*. For per Cur. there is no Difference where one libels, and where many do. For the Reaſon why B. R. permits Mariners to libel there for their Wages, is not only becauſe they are Privileg'd to join in Suit there, whereas they ought to ſever at Common Law, becauſe they Contracts are ſeveral; But alſo by by the Maritime Law, Mariners have Security in the Ship for their Wages, and it is a kind of an implied Hypothecation to them; And therefore B. R. allows Mariners to ſue in the Admiralty for their Wages, *becauſe the have they Ship there for Security*. Lord Raym. Rep. 398. Mich. 10 W. 3. in Caſe of Hook v. Moreton.

S. C. cited Ld. Raym. Rep. 632.

23. On a Queſtion whether a *Mate of a Ship* might libel in the Admiralty for Mariners *Wages*, it ſeemed to the Court that a Mate is but a Mariner and therefore might libel there. Lord Raym. Rep. 397, 398. Mich. 10 W. 3. Hook v. Moreton.

24. *Prohibition* niſi Cauſa was granted to Court of Admiralty for Libelling there for *Seamens's Wages*, it appearing on the Libel that the *Service was* all *in the River Thames*. 12 Mod. 230. Mich. 10 W. 3. Bidolph and Bruce.

12 Mod. 246. S C. and per Cur. the Court of Admiralty may reſeiſe her out of their Juriſdiction, and no Prohibition lies.

25. If a *Ship* be *arreſted by a Proceſs* out of the Court of Admiralty for a Matter ariſing within their Juriſdiction, tho' ſhe be *reſcued at Land*, the Conuſance of the Reſcue belongs to the Admiralty, Otherwiſe not; Per Holt Ch. J. Ld. Raym. Rep. 446. Paſch. 11 W. 3. Rigden v. Hedges.

* S. C cited by Holt Ch. J. 12 Mod. 406. by name of Crosby v. Loſmell.—— S. C. cited by Holt Ch. J. Ld. Raym. Rep. 152. as reſolv'd 2 W. & M. in B. R. Coſtard v. Lewſtie.——S. C. cited 2 Ld Raym. Rep. 805. Arg. & ibid. per Cur. 806. Mich. 1 Ann.

26. Tho' a Maſter of a Ship cannot ſue in the Admiralty for his Wages, yet poſſibly if the *Maſter dies in the Voyage and another Man takes upon him the Charge of the Ship upon the Sea*, ſuch Caſe might be different, as in the Caſe of * **Groſwich v. Louthſley**, where it was held lately in this Court, that if a Ship was *hypothecated* and Money borrow'd upon her at Amſterdam *upon the Voyage*, he that lent the Money may ſue in the Admiralty for it, and this Court granted a Conſultation. But in another Caſe, where Money was borrow'd upon the Ship *before the Voyage* B. R. granted a Prohibition, and the Parties acquieſc'd under it. Per Holt Ch. J. Ld. Raym. Rep. 577, 578. Trin. 12 W. 3. in Caſe of Clay v. Snelgrave.

Ann. in Caſe of Juſtin v. Ballam ——S. C. cited Arg. and by Holt Ch. J. 2 Ld. Raym. Rep. 983. Trin. 2 Ann. by the name of Coſſart v. Lawdſley ——6 Mod. 79. S. C. cited by Holt Ch. J. as the Caſe of Corſtwick v. Lowſeley. 1 W. & M argued and reſolv'd by all the Judges. And Powell J. added, That tho' in that Caſe the Libel laid the Contract to have been ſuper Altum Mare, yet the Court took Notice of it as done at Rotterdam; but being in the Voyage, and occaſioned by a Streſs at Sea, it was held well enough within their Juriſdiction, and that the Hypothecation of Ships is abſolutely neceſſary for the preſervation of Navigation; for the Maſters have nothing elſe to get Credit with, and they are the only Court can give them Remedy; If a Ship in Harbour here in England be Hypothecated, they ſhall not ſue for it there; Maſter can't at any Time ſell, but he may hypothecate in Voyage for Neceſſaries; But the Libel being againſt the Ship and Party, the Court ſaid, they would ſend a Prohibition as to him unleſs quatenus it is neceſſary to make him Party towards the Condemnation of the Ship; and ſo it was done.

Comb 135. Corſet v. Huſeley. Trin. 1 W. & M in B. R. the S C. and a Conſultation awarded by the whole Court; and Dolben J. ſaid, he wondred that this could be made a Queſtion, ſince it was admitted that the Money was for the Uſe of the Ship, but if the Maſter had employed the Money to his own Uſe, a Prohibition ſhould have gone.

27. Executor of the Maſter of a Ship libell'd in the Admiralty Court for Wages owing to the Teſtator by the Owner; but a Prohibi- was granted. 1 Salk. 33. pl. 4. Trin. 12 W. 3. B. R. Clay v. Sudgrave.

Ld. Raym. Rep. 576. Clay v. Snelgrave. S. C. accordingly. ——Carth. 518. S. C. ſays, in this Caſe it happen'd, that the Owner was beyond Sea, and the Counſel for the Adminiſtrator inſiſted that no Prohibition might go, unleſs ſome ſufficient Perſon would appear and put in Bail in an Action to be brought againſt him; becauſe otherwiſe this Debt might be loſt; and the Court thought it reaſonable ſo to do; But afterwards a Rule was made for a Prohibition abſolutely without any Condition. ——Ld Raym. Rep 578. S. P. mov'd by Northey, who ſaid, that this had often been done; And Holt Ch. J confeſs'd, that the Court had ſometimes interpoſed and procured Bail to be given; but then it was by Conſent, and in Caſe of the Proprietor himſelf; But in regard that in this Caſe the Plaintiff was a Purchaſor without Notice, there was no Reaſon; and a Prohibition was granted.

28. A Ship put into Boſton in New England, and there the *Maſter took up Neceſſaries and gave a Bill of Sale by Way of Hypothecation* for the Payment of the Money; and now upon a *Suit againſt the Ship, and the Owners*, a Prohibition was granted as to them, becauſe the Court held, that the Contract of the Maſter cannot make the Owners perſonally ſubject to a Suit; but *as to the Suit againſt the Ship a Prohibition was denied*, becauſe the Maſter can have no Credit abroad, but upon a Hypothecation of the Ship, and it is not reaſonable to hinder the Admiralty from giving a Remedy where we can give none ourſelves. 1 Salk. 35 pl. 9. Trin. 2 Ann. B. R. Johnſon v. Shippen.

6 Mod 79. S. C. and S. P. held accordingly, and the Libel being againſt the Ship and the Party, the Court ſaid, they would ſend a Prohibition as to him, unleſs quatenus it is neceſſary to make him a Party towards the Condemnation of the Ship; and ſo it was done. ——11 Mod. 30. S. C. accordingly.——2 Ld. Raym. 982. S. C. accordingly.

29. The Maſter took *Proceſs* out of the Admiralty, againſt the Owners, *to arreſt the Goods landed at Briſtol in cauſa Salvagii.* Before Appearance it was moved for a Prohibition on Affidavits of the Matter before Libel, whereby it appear'd that the Goods landed were arreſted in Cauſa Salvagii. But per Cur. Tho' the Goods are now arreſted at Land, yet the Salvage, which was the Cauſe of the Arreſt, might be at Sea, which will appear by the Libel, and therefore a *Prohibition was denied till Appearance or Libel exhibited*, and the rather becauſe the Party may have Remedy by Treſpaſs or Replevin, and this is not like **Sands's Caſe**, where on Proceſs to ſtay a Ship in the River a Prohibition was granted before Appearance; for that Proceſs was not for an Appearance as this is, but was in Nature of an Execution. 1 Salk. 35. pl. 8. Mich. 2 Ann. B. R. Tranſer v. Watſon.

2 Ld. Raym. Rep 931. Tranter v. Watſon. S. C. accordingly, and a Prohibition denied.—— 6 Mod. 11. S. C. and Rule for Prohibition diſcharged.

30. It was moved for a Prohibiton to a Suit in the Admiralty for *Seamens Wages* on a *Suggeſtion that the Contract was made* by Deed *at Land.* But upon reading the Suggeſtion it appear'd to be General,

that the Contract was made at Land. The Suggeſtion was amended and made *Per Scriptum.* But the Court held it inſufficient; for it might be by Writing and yet not by Deed, and if ſo it is only a Parol Contract, and the agreement was urged to be Special, yet the Court held, that did not draw it from the Admiralty's Juriſdiction; and the Motion was denied. 2 Ld. Raym. Rep. 1206. Mich. 4 Ann. Benns v. Parre.

Powel J. ſaid, he remembred a Caſe of the like Nature, where a Suit was commenced in the Court of Admiralty by Seamen for their Wages, upon the arrival of the Ship at Newfoundland; and tho' the Merchants all held it no Port of Delivery, yet the Court of Admiralty held the Contrary. And ſo did the Court of C. B. upon a Motion for a Prohibition. 2 Ld. Raym. Rep. 1248. S. C.

31. A Motion was made for a Prohibition to the Court of Admiralty in a Suit there by Seamen for their *Wages* upon a *Suggeſtion that the Court refuſed to allow the Defendants Allegation that the Place, upon the arrival at which the Plaintiffs intitled themſelves, was not a Port of Delivery; and that they refuſed to receive the Allegation, unleſs the Defendant would bring the Money demanded into Court.* But the Ch. J. and Powell held, that the Admiralty Court were the Judges of that Matter; and that if they did not do the Defendant right, his only Remedy was by Appeal; but it was no Ground for a Prohibition; The Suit here was for Wages upon the arrival of the Ship at Guinea. 2 Ld. Raym. Rep. 1247. Paſch. 5 Ann. Brown v. Benn, & al'.

32. A Prohibition does *not lie* to the Admiralty Court *before Sentence*, tho' otherwiſe it is as to the Spiritual Court. Holt's Rep. 49. pl. 5. Paſch. 5 Ann. Brown's Caſe.

33. The Defendant and other *Seamen libelled* in the Admiralty Court *for their Wages, and ſet forth in their Libel, that they went to ſuch a Place, or Coaſt in the Eaſt Indies*, and that the Plaintiff had not paid them their Wages &c. Sir James Montague moved for a Prohibition, for *that Court will not* by their Way of Proceeding, *receive out Anſwer but upon Oath; by which Means we ſhall be forced to diſcover that we traded to the Eaſt Indies, and ſo incur a Penalty* inflicted by Act of Parliament which is general, prohibiting all the Subjects of England to trade or traffick there, except they have a Licence, or are of the Eaſt-India Company. *Beſides, theſe Mariners have a Contract under Hand and Seal for their Wages*, on which they may ſue at Law. But the Prohibition was denied; for it is reaſonable and juſt, whether their going thither was lawful or not, that you ſhould pay them their Wages; there is no unlawful Act ſuggeſted, and if there be a Contract under Hand and Seal for their Wages, yet the Admiralty may have Juriſdiction thereof as Incidental; but if they Judge contrary to our Law, we will prohibit them. But they on the other Side deny the Contract to be as you have alleged. Holt's Rep. 45. 50 pl. 6. Mich. 5 Ann. Gawn v. Grandree.

34. A Prohibition was pray'd, becauſe there was a *Suit for Wages and for Expences in Travelling by Seamen, quoad the Travelling Expences* which were *due* to them *in going by Land from one Ship to another, but belonging to the ſame Maſter*, Sed non allocatur; for ſhall the Seamen be turn'd on Shore &c. and to Travel from one Place to another without having their Charges or Wages born &c? Per Powys ſenior Eyre, and Powys junior. Hill. 12. Ann. Reg. B. R. ex Motione Mr. Whitacre.

35. A Prohibition was pray'd by the Owners of a Ship to ſtay a *Suit* in the Admiralty *by the Maſter and Seamen againſt the Freight of a Ship*, becauſe the Suit ought to have been againſt the Ship or the Owners of it, not againſt the Freight as here. Sed non allocatur, for the *Seamen may join, and by their Law they may lay hold of the Ship*, and if by their Law they can lay hold of the Freight too, why ſhould he prohibit

prohibit them? Beſides was there ever a Prohibition granted at the Suit of a 3d Perſon, as here you pray it, but a Prohibition only as to the Maſter? Mich. 12 Ann. B. R. Neclanham v. Foliamb. & al'.

36. A *Maſter of a Ship ſued* in the Admiralty *for his Wages* and *laid the Contract to be made Infra Fluxum & Refluxum Maris infra Juriſdictionem Curiæ Admiralitatis*; but a Prohibition was denied to be given, becauſe it was *after Sentence*. 2 Ld. Raym. Rep. 1452. Mich. 13 Geo. Barber v. Wharton.

(E. 4) Admiralty. Pleadings.

1 THE *Brought Account for Goods againſt P. in C. B.* and thereupon *P. ſued T. in the* Court of the *Admiraly, ſuppoſing the Goods to have been receiv'd in foreign Parts beyond the Seas*: and the ſaid *T. being committed for refuſing to anſwer upon his Oath to ſome Interrogatories* there propos'd to him, *brought his Habeas Corpus*, which was *return'd thus*, Ego William Pope Mareſcallus ſupremæ Curiæ Admiralitatis Angliæ Dom. Juſtic. ſereniſſ. Reginæ noſtræ in brevi huic Schedulæ annex. ſpecificat. Certific. quod infra vocat. T. ante advent. iſtius brevis capt. fuit & Cuſtodiæ meæ commiſſ. ex eo quod dictus T. vinculo Sacramenti coram Judice Admiralitatis Angliæ aſtrictus ad reſpondend. quibuſdam Articulis contra eum in dicta Cur. dat. &c. ſub Pœna quinque Librarum, &c. contumaciter examen ſuum ſubire recuſavit, idcirco, &c. and it was reſolv'd by the Court of Common Pleas; That the Return abovemention'd was inſufficient as being too general, becauſe it is not ſpecified for what Cauſe or Matter T. was examined, ſo as it might appear that the Interrogatories were of ſuch Things, as were within their Juriſdiction, and that the Party ought by Law to Anſwer upon his Oath, for otherwiſe he might very well refuſe. 12. Rep. 103, 104. Hill. 2 Jac. Tomlinſon v. Philips.

2. A Libel in the Admiralty laid a *Contract apud Malaga infra Diſtrictas Maris vocat' the Straights of Gibralter* Infra Juriſdictionem Maritimam, and a Prohibition was granted, becauſe it appear'd that the Contract was made in the Iſland of Malaga, and then the adding Infra Juriſdictionem Maritimam is void. Hob. 213. in pl. 270. cites Mich. 9 Jac. Audley v. Jennings.

Hob. 79. in pl. 104. S. C. cited accordingly.

3. In an Action upon the *Caſe for ſuing in the Court of Admiralty, for a Thing done in Corpore Comitatus* the *Count was Quod per Statut' 13 R. 2. inter alia, it was enacted, that the Juriſdiction of the Admiral ſhall extend only to Things done, Super altum Mare; and it does not recite the whole Statute; nor that it was in Parliament*; Yet adjudged good and affirmed in Error; For it cannot be a Statute unleſs it be made in Parliament; And No-body is bound to recite any more of a Record than what is ſufficient to induce the Action; As in Debt upon a Judgment it is ſufficient to recite only the Judgment. Jenk. 323. pl. 34. cites Flemming v. Yates.

3 Bulſt. 205. Trin. 14 Jac S. C. the Count only ſaid, (Quod in Statuto continetur) but the Court held it to be no Error, and ſo likewiſe as to the Count being (Inter alia enactitatum fuit,) and Judgment affirmed. —— Roll Rep 203 pl. 5. and 210. pl. 51. S.C. but S. P. does not appear.

4. *Treſpaſs for breaking a Ship and carrying away her Sails.* The *Defendant juſtified by a Warrant from the Admiralty to arreſt the Ship and to keep her ſafe*, by Virtue whereof he entred and carried away the Sails, which is the ſame Treſpaſs. It was objected, that the breaking the Ship

Godb. 385. to 390 pl. 474. Paſch. 3 Car. B. R. the S. C. but I do not obſerve S. P.

Ship was not anſwered, neither was there any Warrant to carry away the Sails; but per Cur. the Plea is good; becauſe the Entry into the Ship by Virtue of the Warrant is in Law a Breaking it, as Clauſum fregit &c. and that he might carry away the Sails; for *this is the Manner of their Proceeding, and grounded on Reaſon*, becauſe he could not keep her ſafely, if the Sails are not carried away. Latch. 188. Mich. 2 Car. Creamer v. Tookley.

5. H. brings an *Action of Falſe Impriſonment* againſt G. The Defendant *pleads a ſpecial Juſtification, that he* took and *impriſoned the Plaintiff by Virtue of a Commiſſion* granted *out of the Court of the Admiralty, to examine the taking away of certain Goods which were wreck'd by the Sea.* The Plaintiff demurred, becauſe the *Defendant has not ſet forth the Cuſtom of the Admiral Court, that the firſt Proceſs thereof is a Capias*, and ſo it appears not whether he have proceeded right or not. 2dly, It does *not appear that the Matter for which the Commiſſion was granted is Maritime*, and other Matter they ought not to meddle withal. The Rule of Court was to ſhew Cauſe why Judgment ſhould not be given againſt the Defendant upon this Plea. Sty. 64. Mich. 23 Car. Hull v. Gurnet.

6. A *Libel for a Ship taken by Pirates, and ſold at Tunis*, but made *no Mention that the Ship was taken Super Altum Mare*; and though there was contained therein very much to imply it, yet the Court held that to be abſolutely neceſſary to ſupport their Juriſdiction. Vent. 308. Paſch. 29 Car. 2. B. R. Anon.

Show. 6. S. C. and the Caſe in Holt's Rep. 47. is copy'd thence.—— Comb. 120. S. C. adjudged for the Plaintiff. —— Carth. 31. S. C. reſolved.—— 3 Mod. 194. Beak v. Thyrwit, S. C. adjornatur.

7. *Treſpaſs for taking a Ship* &c. The Defendant *pleads, that he was Captain of a Man of War, and* that he *took her on the High Seas as a Prize, and carried her to and there proſecuted her, and condemned her in the Admiralty as a Prize* &c. Upon Demurrer Holt Ch. J. held, that he was Captain was well enough; he *need not ſhew his Commiſſion; but it does not appear how this Ship came to be a Prize, nor that there was any Cauſe to ſeize her as ſuch*, nor that there was any War; The ſubſequent going to the Admiralty cannot juſtify the firſt illegal Caption. Beſides, it is *not ſhewn whoſe Court of Admiralty it was, nor before what Judge.* Judgment pro Quer' by the whole Court. N. B. This was an Interloper ſeized by the Eaſt India Company, and carried to the Indies, and there condemned by the Company's Admiral &c. Holt's Rep. 47. pl. 1. Paſch. 1 W. & M. Beake v. Tyrrell.

For more of the Court of Admiralty, See 4 Inſt. 134. Cap. 22. and Prynn's Animadverſions, Amendments of, and additional Records to 4 Inſt. 75. to 134.

Cinque Ports.

(E. 5) The Juriſdiction of the Cinque Ports.

He that is the Conſtable, or Lieutenant, or Keeper of the Caſtle of Dover, is alſo the Warden of the Cinque Ports; and the *King's Writs* directed to him *are directed Rex* &c. *Conſtabulario Caſtri ſui de Dover, & Cuſtodi Quinque Portuum ſucrum*; but he is *commonly called Lord Warden*

1. 28 E. 1. cap. 7. *THE Conſtable of Dover Caſtle ſhall not hold Plea of any foreign County within the Caſtle-Gates, except it concerns the keeping of the Caſtle; neither ſhall he diſtrain the Inhabitants of the 5 Ports to plead elſewhere, or otherwiſe than as they ought, according to the Form of their Charter, confirmed by the Great Charter.*

Warden of the Cinque Ports The Cinque Ports are, *Haſtings, Dover, Hithe, Rumney, and Sandwich,* whereunto *Winchelſea and Rye* (as moſt of Note) *and other Towns be adjoined* 2 Inſt. 556.

The Conſtable of Dover, and Lord Warden, *has two Juriſdictions*, viz. The *Authority of an Admiral, and to hold Plea by Bill concerning the Guard of the Caſtle* &c. according to the Courſe of the Common Law, and of this Juriſdiction doth our Statute ſpeak. 2 Inſt. 556, 557.

2. A. brought *Debt* in London by Writ *in C. B. againſt the Gaoler of the Cinque Ports, becauſe he had J. N.* who was condemn'd to the Plaintiff, *in Execution, and ſuffered him to eſcape in London.* The Defendant pleaded Nul tiel Record. The *Juſtices write to the Conſtable of Dover, and he over to the Barons of the Cinque Ports.* Br. Cinque Ports &c. pl. 26. cites 30 H. 6 6. And Brooke ſays, Et ſic vide that the Juſtices of C B. may write to the Conſtable of Dover for a Record of the Cinque Ports.

3. *Recovery in Bank of Lands in the Cinque Ports is good* as it is in Ancient Demeſne, or of Lands where Conuſance of Pleas is; and *yet in other Action of the ſame Land again at another Time, the Tenant may plead that it is in the Cinque Ports* in the one Caſe, and the Lord may demand Conuſance in the other Caſe, and ſo the Nature of the Land by this Recovery is not changed. So it ſeems of Recovery in Bank of Land in London. Br. Cinque Ports, pl. 24. cites 36 H. 6. 33.

4. It was ſaid, that the Cinque Ports *are not by Grant of the King, nor by Preſcription, but by an Act in an ancient Parliament.* Quære. Br. Cinque Ports, pl. 23. cites 12 E. 4. 17, 18.

5. In Treſpaſs it was ſaid Arguendo, that *Recovery in C B. of Land which lies in Cheſter, Durham and Lancaſter, is void; Contra in the Cinque Ports*; Quære & ſtude diverſitatem. Br. Cinque Ports, pl. 24. cites 9 H. 7. 12.

6. The Conſtable of Dover, who is Warden of the Cinque Ports, ſhall not hold Plea *of a Thing which ariſes in the County out of the Cinque Ports.* Br. Juriſdiction, pl. 99. cites F. N. B.

7. The Conſtable of Dover, who is Warden of the Cinque Ports, *cannot hold Plea of a Thing which doth belong to be determined in the County, if it be not of a Thing concerning the keeping of the Caſtle of Dover*; and if he does, the Party ſhall have a *Writ* directed unto him *to ſurceaſe*, and upon the ſame *an Alias, and a Pluries, and an Attachment.* F. N. B 240. (B)

8. *If the Conſtable holds Plea of any Thing of which he ought not for to hold Plea*, the *Party ſhall have his Action upon the Statute*, although he does not ſue forth any Writ before directed to the Conſtable. F. N. B. 240 (C)

9 The *Defendant was committed becauſe he would not anſwer*, the Land lying in the Cinque Ports. Toth. 215. cites 40 Eliz. Langham v. Beachampe.

10. *Appeal of Murder* was brought *in B. R. of a Murder done* upon the Plaintiff's Brother *at S. in the County of K.* It was objected that it did not lie, becauſe S. was *within the Cinque Ports* where the King's Writ does not run, and that the Cinque Ports nor any Part of them are within the County of Kent. All the Juſtices delivered their Opinions ſeverally that the Plea was not good for the Matter; becauſe this Action of Appeal is higher than an Action Real or Perſonal, and in ſome Sort concerns the Queen; And in ſuch Caſes as concern the Queen it is no Plea to ſay that it is within the Cinque Ports, As in a Quare Impedit. Cro. E. 910, 911. Mich. 44 & 45 Eliz. B. R. Criſp v. Verral.

Yelv. 12. S. C. and the Plea adjudg'd ill; For though the Cinque Ports have divers grand Liberties, yet the Reaſon of the Grant of thoſe Liberties was for the Eaſe and Benefit of the Inhabitants and not to their Prejudice. A 2d Reaſon was, becauſe the Defendant having done the Murder within the Cinque Ports and flying out of the Cinque Ports, if the Pleading here ſhould be good, there would be a Failure of Juſtice; For thoſe of the Cinque Ports cannot try him, becauſe he is not there. Popham ſaid, if the Defendant had ſhewn that at the Time of the

Murder ſuppoſed, and ever after he had been and was an Inhabitant and Commorant within the Cinque Ports, and ſo by his Plea he had given Juriſdiction to the Court there, and they as Judges prav'd to have View, that the Defendant, if Guilty, might have receiv'd a Satisfactory Judgment, viz Death for Death, then the Plea had been good; but the Defendant has not ſhewn any ſuch Thing whereby it appears that this Court of the King has ſo much Juriſdiction. A 3d Reaſon was added by Gawdy, Fenner and Yelverton J. becauſe this Court of B. R. is the moſt High Court of Juſtice, and of greateſt Sovereignty; And though the Kings before have granted Conuſance of Appeals to the Barons of the Cinque Ports, yet this does not give away the Queen's Intereſt as touching herſelf, and in this Appeal the Queen has Intereſt by a Meane; For if the Plaintiff be nonſuited after Declaration or releaſes (according to 29 H. 6. Corone) yet the Defendant ſhall be arraign'd at the Suit of the Queen And further all the Court held the Plea Double and Repugnant; The one is, that Sand. which is Parcel of the Cinque Ports, Ubi Breve Dominæ Reginæ non currit, which is a Matter in Law put in the Judgment of the Court; The other is, that it is not in the County of Kent, which by the firſt Plea is denied, viz by ſaying that it is Parcel of the Cinque Ports &c. and yet by the other Part it is utterly denied to be in the County of Kent and ſo Repugnant; And alſo in Truth all the Cinque Ports are Parcel of the County, though by their Charter they are exempt from being drawn in Plea within the County generally.

11. Of ſuch Things whereof the *Conſtable of Dover and Lord Warden* hath Juriſdiction, he *is the immediate Officer to the Court*, and as it has been ſaid, *Writs ſhall be directed to him as in all real Actions &c. for Land within the Cinque Ports.* 2 Inſt. 557.

12. They of the Cinque Ports *have great Liberties and Privileges*, in reſpect of their neceſſary Attendance in the Ports for the Defence and Safety of the Realm. 2 Inſt. 557.

13. If a *Præcipe* be brought againſt one *for Land within the Cinque Ports* and he appears and pleads to it, *and Judgment* be *given againſt him in C. B. this* Judgment *ſhall bind him for ever*; for the Land is not exempted out of the County, and the Tenant may wave the Benefit of his Privilege. 2 Inſt. 557.

14. The *Cinque Ports are not exempted out of the County* for divers Cauſes. 1ſt. The Conſtable of Dover has no general Juriſdiction within the Cinque Ports, but it is limited; For Example, *If a Man be murdered in any of the Cinque Ports the Wife ſhall have an Appeal* againſt the Murderer *directed to the Sheriff of the County*, and he ſhall execute the Writs within the Cinque Ports; for the *Conſtable hath no Juriſdiction to hold Plea thereof* as it was reſolved Trin. 42 Eliz. in an Appeal brought by **Waes v. Baynes**, for the Murder of her Husband at F. in the County of K. 2 Inſt. 557.

15. And *ſo* it is *if he be in Cuſtodia Mareſcalli*, the Appeal may be brought by Bill againſt him for Murder in any of the Cinque Ports. 2 Inſt. 557.

16. Alſo if the Conſtable of Dover *hold Plea of a Foreign Plea*, contrary to the Purport of this Statute, an Action upon the Statute doth lie againſt him, and the Writ may be directed to the Sheriff of the County, and he may ſerve it within the Cinque Ports. 2 Inſt. 557.

17. Prohibition was mov'd for to the Court of Dover, for that they *held Plea* there by *Plaint*, *in Nature of a Writ of Partition between Tenants in Common*, *but they having proceeded to Judgment and Execution*, all the Court held it *too late for a Prohibition*, inaſmuch as there is no Perſon to be prohibited, and Poſſeſſions never were remov'd or diſturbed by Prohibitions. Sid. 165. pl. 24. Mich. 15 Car. 2. B. R. Hall v. Norwood.

For though they have a Chancery in the CinquePorts, yet they do *not make any original Writs there*, but it ſerves only to decide Matters of Equity; Per Keling J. Sid. 166. in pl. 24. Mich 15 Car. 2. B. R.

18. They may *hold Plea of Franktenement* in the Cinque Ports; for otherwiſe there will be a Failure of Juſtice. Per Keeling J. Sid. 166. in pl. 24. Mich. 15 Car. 2. B. R.

19. The

19. The great *Uſe of their Chancery there* is *to be reliev'd againſt Errors in Proceedings at Law*, the which Errors they uſe to indorſe on the Bill; And the Reaſon of this is, becauſe the Writ of Error of thoſe Judgments lies only at Sheppy, the which Place if it be admitted to be known, yet the Lord Admiral has not held Court there for a long Time. Sid. 356. in pl. 6. Hill. 19 & 20 Car. 2. B. R. at the End of the Caſe of Ting v. Merriwether in a Note there, ſays, ſic dictum fuit. And Twiſden J. ſaid, that Writ of Error or *Certiorari* lies to the Court of Sheppy, though not from that Court to the Inferior Courts there, and that ſo the Books which ſpeak of Error to the Cinque Ports are to be underſtood, Quod Nota.

20. A *Certiorari* was ſent to W. *for a Record* that they had made, *whereby they had taxed the Foreign*; and they *return that they had made Taxes for the Foreign for the Preſervation of the Corporation, and to raiſe Ammunition to provide againſt Invaſion of Foreigners; and ſhewed that W. was one of the Cinque Ports, ubi breve Domini Regis non currit.* Per Hale Ch. J. you *ought to ſet forth that there was ſome Juriſdiction to which the Party might Appeal* if he were injured, otherwiſe the Corporation will be Party and Judges and all, and they will tax the Lands of the Foreign to what Value they pleaſe. Freem. Rep. 99. pl. 111. Paſch. 1673. Anon.

21. Upon an *Appeal* from a Sentence in the Admiralty of the Cinque Ports, the *Lord Warden granted a Commiſſion of Delegates*, and upon a Demurrer to a Bill for that the Plaintiff did not ſet forth that the Lord Warden had Authority to grant ſuch Commiſſion, the Court made no Order as to that Matter, but could not relieve the Plaintiff, becauſe the Appeal *was not within 15 Days after* the Sentence. Fin. R. 437. Mich. 31 Car. 2. Denew v. Stock.

(E. 6) In what Caſes the Writ of the King runs thither. And of Returns thereto.

1. CErtificate upon *a Statute Merchant* the *Sheriff return'd* Quod *non eſt inventus* &c. Thorp pray'd *Writ to the Conſtable of Dover and to the Wardens of the Cinque Ports, inaſmuch as the Lands are there*, and the Sheriff may make Execution there, and for this Cauſe the Writ was granted him. Br. Cinque Ports, pl. 6. cites 21 E. 3. 49.

2. *Debt* by H. and H. *againſt T. as Heir*; who *pleaded nothing by Deſcent.* The Plaintiff *replied Aſſets at ſuch a Place within the Cinque Ports.* And ſo it was found by a Jury of the County adjoining, and Judgment given of the Moiety of his Lands, as well thoſe by Deſcent as by Purchaſe; And a *Writ awarded to the Conſtable of Dover, to extend the Lands within the Cinque Ports. But* it was *ſaid, that firſt the Plaintiff ought to have a Certiorari to ſend the Record into the Chancery, and from thence by Mittimus to the Conſtable of Dover.* 3 Le. 3. pl. 7. 3 & 4 Ph. & M. Heck v. Tirrell.

3. A *Contract* was made between A. and B. *in London*, afterwards *A. left the City and dwelt within the Cinque Ports*; and being afterwards impleaded upon this Contract *he claim'd his Privilege of the Cinque Ports*, and cited 12 E. 4. that thoſe of the Cinque Ports ſhall not be ſu'd elſewhere than within the Cinque Ports. Suit J. ſaid, that this was true for any Matter ariſing within their Juriſdiction; But where a Man gives a Bond of 100 l. or 1000 l. and then goes and dwells in the Cinque Ports, perhaps the Obligee might loſe his Debt; And adjudg'd he ſhall not

not have his Privilege. Godb. 90. pl. 102. Mich. 29 Eliz. B. R. Anon.

4 If a *Stranger does Treſpaſs &c. in the Cinque Ports* &c. the *Suit ſhall be by Writ*, leſt the Treſpaſs ſhould be diſpuniſhable. 2 Inſt. 557.

5. The *Privilege extends to certain particular Towns whereof the King's Courts cannot judicially take Notice.* 2 Inſt. 557.

6. *B. being impriſoned by the Lord Warden* of the 5 Ports, a Habeas Corpus *was awarded to the Warden, who refuſing to obey it, then an alias Habeas Corpus was with a Penalty*, the Warden pretending that the King's Writ did not run there. Reſolved by all the Judges that the King's Writ did run there, and eſpecially this Writ which is a Prerogative Writ, which concerns the King's Juſtice to be adminiſtred to his Subjects; for *the King ought to have an Account why any of his Subjects is impriſoned, and no Anſwer can ſatisfy it, but to return the Cauſe paratum habeo Corpus*; wherefore the Court all held that another Habeas Corpus ſhould be awarded under a great Penalty returnable at another Day. Cro. J. 543. pl. 3. Mich. 17 Jac. B. R. Bourn's Caſe.

Palm. 54. and 96. S. C. the Impriſonment was till he reſtored them 40 l. for taking an Anchor and Cable caſt into the Sea, and found upon the Sands, and carrying it away, and being required to reſtore them he refuſed, and upon a Habeas Corpus to the Lord Warden, he returned the Body and the Cauſe. The Court held, that if no Cauſe had been alleged in the Return they might then deliver the Priſoner, but the Lord Warden having returned Cauſe that the Party was cited, and Judgment given Secundum Leges Maritimas, which B. R. on a Habeas Corpus cannot redreſs, though it be unjuſt; for when they proceed againſt him judicially this Court cannot reform, though otherwiſe if without Cauſe. For Habeas Corpus queſtionem ſolvit de ceo, and not if the Judgment be good or not; for if the Priſoner when cited and required to reſtore the Anchor had there intitled himſelf, in ſuch Caſe, as Dodderidge ſaid, it might be removed by Stat. 15 R. 2. and when he confeſſes the taking to be within their Juriſdiction, and denies to reſtore it, the Court here will not intend the Judgment againſt him to be unjuſt; and it appears that they have Juriſdiction of it; and there is a Difference when they commit him Secundum Leges Maritimas, and he is in Execution by Judgment there, and when they commit him without Cauſe. And the Court awarded, that the Priſoner be remanded, and pay according to the Judgment below, and that then he might have Falſe Impriſonment, or Debt, and recover his Money and Damages if the Cauſe be not true and good. —— 2 Roll Rep. 157, 158. Barnes's S. C. accordingly.

7. *Certioraries to remove an Indictment* taken in the Cinque Ports *ſhould be immediately directed to the Juſtices before whom the Indictment was taken*, becauſe *they hold Plea of it as Juſtices of Peace*, by Virtue of their Commiſſions, *and not by their ancient Charters* or Preſcription. Cro. C. 253, 254. at the End of pl. 3. cites Mich. 8 Car. Anon.

8. *Prohibition* was moved for to the Cinque Ports, for *that they held Plea there, partly by the Chancery, and partly the Admiralty, in the ſame Cauſe, (viz.) an Admiralty Proceſs upon a Chancery Bill*; it was agreed that they have thoſe diſtinct Courts there, but it was denied that they may ſo confuſedly hold Plea. 2dly, It was objected, that the Defendant had appeared, and ſo had owned the Juriſdiction, and the Cauſe was ready for Sentence; but per Cur. ſince a Prohibition lies to the Cinque Ports, this Court ſhall not be ouſted of Juriſdiction by any owning of the Party. Sid. 355. pl. 6. Hill. 19 & 20 Car. 2. B. R. Ting v. Merriwether.

9 A *Quo Minus lies in the Cinque Ports* as well as within a County Palatine, or in Wales, and rather in the Cinque Ports than in a County Palatine, becauſe a County Palatine has Jura Regalia within itſelf, and it is uſual to grant Prohibitions into County Palatines; and ſo it was done laſt Term to the County Palatine of L. upon a Suit commenced here by Quo Minus, and afterwards a Bill preferred there to ſtay it; and ſo it would be if a Suit were commenced in the Admiralty, there againſt Law a Prohibition would lie, and the King's Debtor has the ſame Privilege that the King has, to ſue for his Debt where he will; it would elſe be very inconvenient, if a private Juriſdiction might do what they would, and there would be no Remedy elſewhere. Hard. 475. Hill. 19 & 20 Car. 2. in Scacc. Sir John Williams v. Liſter.

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10. An *Habeas Corpus ad faciend' & recipiend'* will not lie to the Cinque Ports, but an Habeas Corpus *ad faciendum* & ſubjiciendum lies, and ſuch was returned this Term. Sid. 431. pl. 21. Mich. 21 Car. 2. B. R. Anon. Mod. 20. pl. 53. Anon. S. P. and ſeems to be S. C.

11. The *Defendant was in Execution at Dover for* 100 *l. recovered againſt him at the Court of D.* The *Plaintiff brings a Quo Minus againſt him* in the Exchequer *for a Debt of* 100 *l. and ſued out a Habeas Corpus to the Conſtable of D. to bring the Body of the Defendant.* The Conſtable upon the Return ſet forth the Privilege of D. being a Cinque Port Town, but that Return was diſallowed of, becauſe *there is no Place privileged* in this kind, *but that the King may ſend his Writ to have an Account of his Subjects, though it be privileged, as to Actions between Party and Party.* It was prayed by Sir Edward Thurland, the Duke of York's Attorney, that the Priſoner might be remanded, becauſe thoſe Debts which were recovered againſt him at D. might otherwiſe be loſt. But it was denied by the Court; for when he is committed here he is charged as well with the Judgment that he was in Execution for at D. as for thoſe that are recovered here, and if the Warden diſcharge them before the Satisfaction of thoſe Debts, he is liable to an Action. Freem. Rep. 12. pl. 10. Trin. 1671. Alder v. Puiſey.

12. *If a Man be outlawed, his Lands, within the Liberties of the Cinque Ports, may be ſeiſed* into the King's Hands, *and may alſo be extended upon Judgments*; per Windham. Freem. Rep. 12. pl. 10. Trin. 1671. Alder v. Puiſey.

13. In *Matters that concern the King's Revenue, or* in Matters *criminal, or where the Liberty of a Subject is concerned*, a *Certiorari would lie.* Arg. Freem. Rep. 99. pl. 111. Paſch. 1673. B. R. Anon.

14. *Certiorari to the Mayor*, Jurats and Commonalty of Winchelſea, *to remove an Order by them made, who return*, that Time out of Mind there have been in Kent 5 ancient Towns, (viz.) Haſtings, Sandwich, Dover, Rumney, and Hithe, always called the Cinpue Ports; and in Suſſex 2 ancient Towns, called Rye and Winchelſea, which are Members of the ſaid Cinque Ports; that the ſaid Town of Winchelſea hath been Time out of Mind incorporated by the Name of Mayor, Jurats, and Commonalty of Winchelſea; that all the ſaid Cinque Ports, with their Members, have been, Time out of Mind, Places for ordering the Preſervation of Shipping, and that by reaſon of their Situation &c. have always, and ought to keep Beacons and Watch-Houſes &c. for the better Maintenance thereof; that the Town of W. in their common Hall, uſed to make Taxes and Rates on every Occupier &c. of Houſe or Land within their Town or Liberty, which ſaid Privileges were confirmed by Magna Charta; *that* 1 *May* 32 *Car.* 2. *they made a Tax of* 6*d per Pound for maintaining the* ſaid *Beacons and Watch-Houſes* &c. The *Objection was, that this Order did not ſet forth that the Beacons and Watch-Houſes were in Decay*, or out of Repair, and ſo the Rate unneceſſary; *But reſolved to be well enough; For it might be dangerous to ſtay till the Beacons were in Decay, for then there would be none till repaired, which would be dangerous for the Place, and it is to be preſumed, that the Inhabitants would not charge themſelves unneceſſarily*, and they do all concur in the Taxation; and ſo the Order was confirmed. Raym. 448. Paſch. 33 Car. 2. B. R. Winchelſea Town's Caſe.

(E. 7) Pleadings. And of Errors in Judgments there.

Br. Brief, pl. 86. cites S. C.

1. ACCOUNT *againſt one as* Bailiff of his Manor, and Receiver of his Money in the Vill of P. and counted as *Bailiff in P. and Receiver in the Caſtle of P.* where *P. is one of the Cinque Ports*, and the *Caſtle is Guildable*, and there per Belk. clearly no Writ of the King lies in the Cinque Ports upon this of *Franktenement*, *or not*, but *ſhall be pleaded there by Bill.* Parle ſaid, P. was lately in the Hands of the King, and the Plaintiff has it in Farm of the King, ſo by the *Unity of Poſſeſſion* the ſaid P. is not now of the Cinque Ports; and after by Award the Defendant was compelled to anſwer to this Part that was Guildable, and to the other Part he took nothing by his Writ, and that the Franchiſe is not extinct by the Seiſin of the King, and eſpecially where it comes to the King as Eſcheator as Parcel of the Honour of England; Quod Nota; that *he who pleads to the Juriſdiction* by the Cinque Ports *ſhall conclude, Judgment if the Court will take Conuſance.* Br. Cinque Ports, pl. 3. cites 49 E. 3. 24.

Crompt. Juriſd of Courts, 138. a. cites S. C.

2. Treſpaſs in D. The Defendant ſaid, that D. is within the Cinque Ports where the Writ of the King does not run; *Judgment of the Writ*; And ſo ſee that he did not ſay, Judgment if the Court will take Conuſance, and admitted. Br. Cinque Ports, pl. 4. cites 50 E. 3. 5.

3. *Detinue* of Charters; Rolf defended Tort and Force and no more, and *ſaid, that the Land compriſed* in the Charters *is within the Cinque Ports*; Judgment if the Court will take Conuſance. Martin ſaid, You ought *to ſay, that the Place where he made the Bailment, and where the Writ is brought, is within the Cinque Ports, where the Writ of the King does not run*; and after Rolf made full Defence and imparl'd. Br. Cinque Ports, pl. 7. cites 7 H. 6. 22.

4. *Error* in the Cinque Ports *ſhall be reverſed before the Conſtable of Dover*, who is *Warden of the Cinque Ports*; Per Pole. Br. Cinque Ports &c. pl. 26. cites 30 H. 6. 6.

5. If Erroneous Judgment be given in the Cinque Ports, this ſhall be revers'd by Writ *of Error directed Cuſtodi quinque Portuum.* Brooke makes a Quære if it ſhall not be to the Conſtable of Dover, that he ſhall Write to the Cinque Ports to certify the Record, and ſo to reverſe it. Br. Cinque Ports pl. 25. cites Lib. Diviſionum Curiarum.

6. An *Erroneous Judgment* given in Cinque Ports, *ſhall be examined before the Warden* of the Cinque Ports at Shepway in Kent, and if the Mayor and Jurats there have given an Erroneous Judgment, they ſhall be fined. Jenk. 71. pl. 34.

7. The *Mayor and Jurats* of the ſeveral Cinque Ports, *have Power to hold Pleas &c. and upon their Judgment no Writ of Error out of the Chancery does lie returnable in B. R. nor Writ of falſe Judgment returnable into C. B. but by the Franchiſe and the Cuſtom of the Cinque Ports, ſuch an Erroneous Judgment ſhall be by Bill in the nature of a Writ of Error, examined coram Domino Cuſtode ſeu Gardiano quinque Portuum apud Curiam de Shipwey. And* if the Judgment be Erroneous it *ſhall be reverſed by the Warden of the Cinque Ports*, and the Mayor and Jurats ſhall be fined, and the Mayor removed from his Place, and yet the Court is a Court of Record. But 28 E. 1. extends only to Courts holden before the Conſtable in that Act mentioned, and not to the Court holden before the Mayor and Jurats. 2 Inſt. 557, 558.

8. There

8. There was great Contention whether a Writ of Error to reverſe a Judgment in any Vill of the Cinque Ports, would lie in B. R. or a Writ of Falſe Judgment in C. B. but there being no ſuch Writ in the Regiſter nor any Precedent in any Court found, Lord C. Bromley by the Opinion of the Chief Juſtices of both Benches denied to grant one. And it was ſaid that by the Cuſtom and Uſage of the Cinque Ports, ſuch *Falſe Judgment ſhall be examined before the Lord Warden of* the Cinque Ports, *at the Court at Shepway*, and if it be falſe it ſhall be revoked; And that the Mayor and Jurats who gave the Judgment ſhall be fined, and the Mayor depoſed from his Office. D. 376. a. pl. 23. Paſch. 23 Eliz. Anon.

Ibid. at the End ſays Tamen Vide the Book of Diverſity of Courts that Writ of Error lies there, Fol. 2. and and that Brooks accords and vouches it

at tit. Cinque Ports. ——Br. Cinque Ports, pl. 25 cites the ſame Book, but ſays Quære, if it ſhall not be to the Conſtable of Dover that he ſhall write to the Cinque Ports to certify the Record and ſo to reverſe it.

9. *Ejectment of Lands in A.* the Deſendant *pleaded that A. prædict' Ubi Tenementa jacent, lay within the Cinque Ports*; the Plaintiff *replied that it is within the County of Suſſex, abſque hoc that A. is within the Cinque Ports*; It was ſaid that the Traverſe was not good, for that *Part of A.* (as the Truth was) *lay within the Cinque Ports.* The Court held the Replication and Traverſe both good, for by the Defendants Plea it ſhall be intended that all A. is within the Cinque Ports, and the ubi Tenementa jacent are idle Words, and it was on the Deſendants part to have ſhewed, that part of A. lay within and part without the Cinque Ports, which becauſe he has not ſhewed it, the Plaintiff has advantage, by Traverſing that A. is not within the Cinque Ports. Cro. J. 692. pl. 5. Mich. 22 Jac. B. R. Auſten v. Royden.

Win. 113. Auſtin v. Beadle S. C. reſolv'd, that the Traverſe was good and that the Deſendant in his Plea ought to have made the Diſtinction and that the Traverſe here ought to be to the Ubi, and the Court does not imagine any Fractions of Towns.

10. *Treſpaſs*; the Deſendant *pleaded that it was committed within the Liberty of the Cinque Ports*, and ſet forth the Privilege of the Cinque Ports. The *Plaintiff demurs, becauſe he does not ſay that he was an Inhabitant there*; and Judgment againſt the Deſendant, for if this Plea ſhould be admitted to be good, then Treſpaſſes committed within the Cinque Ports by one that lived out, or would preſently abſent himſelf, would be diſpuniſhable; and *the Reaſon of the Privilege of the Cinque Port is, that the Inhabitants there, who are to defend the Port-Towns ſhould not be drawn away*; which does not extend to Strangers. Freem. Rep. 12, 13. pl. 11. Trin. 1671. C. B. Thomſon v. Fokes.

For more of Cinque Ports, See Crompt. Juriſdiction of Courts, 137. to 142. —— 4 Inſt. 222. to 225. Cap. 42 —— Prynn's Animadverſions &c. on 4 Inſt. 152 to 155. &c.

(F.) Courts of the Foreſt.

Juſtice Seat.

In what Places it may be *held.*

1. A Juſtice Seat may be ſummoned to be held within the Foreſt, and after the Ch. J. in Eyre upon his coming there at the time appointed (*) may adjourn it to any Place within the County, though it be out of the Foreſt. Trin. 11 Car. B. R. between

* Fol. 534. Cro C. 409. pl 3. S. C.

adjudged. —— Jo. 347, 348. S. C. —— See Jo. 297 where there was an Adjourment to Bigshot, Sept. 26. 1633.

tween the King and *Basil Brook* and Master *George Mynne*, adjudged upon demurrer, where the Case was, that a Sci. fa. was brought against them to shew Cause why Execution should not be granted against them, for several Fines adjudged against them at the Justice-Seat for the Forest of Dean, which was summoned within the Forest, and from thence adjourned to the Castle of Glouceſter, and there held, and they there indicted and fined; and the Defendants pleaded that the said Castle of Glouceſter, where it was held, was out of the Forest; and upon this the Attorney-General demurred. But after the Defendants submitted themselves to the King, and therefore would not any further defend; but upon Dyer of the Record the Court inclined, that it was well held at Glouceſter, and therefore gave Judgment for the King and Attorney; and the Court said, there were many Precedents accordingly.

2. Mich. 11 Car. B. R. A Scire facias was brought against Rowles upon Recognizance taken by the Ch. J. at the said Justice-Seat held in the said Castle as aforesaid; and it was pleaded in Bar thereof by myself, that the said Castle was out of the Forest; upon which it was demurred by the Attorney-General, and now adjudged for the King, for the Reason aforesaid, and the Court also said, that the Ch. J. may take a Recognizance in any Place, though it be not at any Justice-Seat.

For more as to the Justice Seat, and the Court of the Forest, See Manwood's Treatise of Forest Laws.

(G) Courts. *King's Bench.*

[*It's Power as to Issues sent thither out of Chancery to be tried there, and as to Records coming there*]

* Fitzh. Petition pl. 3 cites S. C.

1. IF a Petition be endorsed, that the Chancery shall send a Verdict returned there B. R. where the Justices shall do Right, the Verdict it self ought to be sent, and not a Tenor only. * 22 E. 3. 5. 38 E. 3. B. R. Rot. 16. It was shewed to the Parliament, that a Manor was held of a Barony of a common Person, that after the Manor was forfeited to the King, and he granted it to another to hold of himself per Servitium militare, ubi per Legem deberet dici, Tenendum de capitalibus Dominis feodi illius, &c. Et petit, that the said Charter be amended in the said Clause; upon which was a Plea in Chancery, and found by Escheator, & per Juratam here to be true. Et quia Judicium super Veredicto prædicto, & Executio Judicii pertinent ad Officium Cancellarii facienda, ideo mittitur in Cancellariam, & datus est dies usque, &c.

* Br. Record. pl. 44. cites S. C & S. P. by Shard; and Brooke says, Quod Nota, whether it be by Writ or Error or otherwise as it seems, quod non negatur.

2. If a Record be once come into B. R. this can never be remanded. 22 E. 3. 6. b. * 29 Ass. 43. per Shard † 40 Ass. 29. 19 Ass. 4.

† Br. Record pl. 46 cites S. C. & S. P. and therefore in Case of Writ of Error of Fines the Tenor only shall be remov'd and not the Fine it self; For in Case of a Fine if the Judgment shall be affirm'd there is no Chirographer in B. R. to ingross the Fine. —— Ibid. pl. 79 cites 5 Mar. 1 Nota, that in B. R. are divers Precedents that in Writ of Error on a Fine, the Record it self shall be certified so that no more Proclamations shall be made, and if they are reversed this makes an End of the whole, but if they are affirm'd then the Record shall be sent into C. B. by Mittimus to be proclaimed,

ed and ingroſſed, Quod Nota; For if the Tranſcript only be remov'd they may proceed in C. B. notwithſtanding; Quod Nota.—When a Record comes into B. R. it ſhall never be remanded but in the ſame Term in which it comes in; Per Coke Ch. J. Roll Rep. 85. in pl. 33.——If a Record be filed in B R. it can never be ſent down, or remanded either in the Term it is filed in or any other, and that is plain by the Act of 6 H. 8. cap 6. which enables this Court to do it in that Caſe of Felony, which otherwiſe they could not have done; Per Holt Ch. J. 1 Salk 352. pl. 13. Trin. 3 Ann. B. R. in Caſe of Farakerly v. Baldo.——6 Mod. 177, 178. S. C. & S. P. accordingly.

3. **If it be** found **by Inquiſition** in Chancery, that a Copyhold was granted to J. S. in Fee in Truſt for J. D. **who was** an Alien Amy, for which the Copyhold was ſeiſed into the King's Hands; **upon which Charge of the Inquiſition,** J. S. comes and traverſes the Truſt, and pray's to be reſtored to the Poſſeſſion, **and** Iſſue is joined in Chancery upon the Truſt, **and thereupon the** Record is delivered over **by the Hands of the Commiſſioners of the Great Seal** to B. R. to be tried, **and there a** Verdict is found for the King, **and after** moved in Arreſt of Judgment that there is not any Cauſe for the King to ſeiſe **the** (*) **Copyhold,** and ſo by Conſequence the Inquiſition void; **For it was conceived, that the Truſt of a Copyhold of Inheritance in an Alien is not given to the King. But it was** reſolv'd **per Curiam,** that **thongh it ſhould be admitted, that** the King **ſhall have this Truſt yet he** cannot ſeiſe the Copyhold, **and by this have the Poſſeſſion,** but ought to be relieved in a Court of Equity, and that the King's Bench is not only to try the Iſſue, but ought to give the ſame Judgment upon the Record, which the Chancery ought to have given there; **though it was objected, that the Record remanded in filacijs of the Chancery, as this Record tranſmitted mentions; yet becauſe this Record ſhall never be remanded in Chancery, but Judgment is to be given here, the Court here ſhall give Judgment according to the Law upon the Record here, according to the Caſe upon the Record made, between the King and the Party; and therefore the Judgment ought here to be given againſt the King, and that J. S. ſhall be reſtored to his Poſſeſſion. P. 24 Car. B. R. between the King and *Holland*, adjudged; Intratur, Tr. 21 Car. Rot. 20.**

* Fol. 535 All. 14. &c. S. C. reſolv'd per Cur. that Judgment ought to be given againſt the King, becauſe the whole Record is virtually here, otherwiſe they ſhould be bound up to the Verdict, ſo that Judgment ſhould be given according to that, tho' it appears upon the whole Record that the Plaintiff has no Title; and the Judges denied that

Chancery could proceed upon the Inquiſition, now that the ſame was ſent hither upon the Traverſe, but that the Judgment in B. R would utterly ſubvert the Inquiſition; and Judgment was given quod Manus Domini Regis amoveantur.——Sty. 20. S. C. argued ſed adjornatur. Ibid. 40. S. C. argued ſed adjornatur. Ibid. 75, 76. S. C. the Court order'd Cauſe to be ſhewn the Tueſday following why the Party ſhould not be reſtor'd to his Lands. Ibid 84. S C. a Motion was for an Amoveas Manum to the Chancery, that the Party might have his Land out of the King's hand; But the Court ſaid that the Judgment is to be given here, if there be Cauſe for the King, and if not then againſt him, and you ought not to go to the Chancery, and that all they can ſay is that the King ſhall not have Judgment. Ibid. 90 S. C. & S. P. and that the Chancery cannot do any thing in the Cauſe; For they have Nothing before them, and Reſtitution ordered Niſi Cauſa. Ibid. 94. S. C. & S. P. accordingly by Roll and Bacon. Sed Cur. adviſ. vult.

4. Of a *thing which touches the King mediately or immediately*, they ſhall receive Appeal in B R. by Bill, by which *Appeal of a Cup ſtole* was there Proſecuted, and well, quod Nota. Br. Bille. pl. 18. cites 17 Aſſ. 5.

5. *Scire facias upon Recognizance in Chancery* brought in Chancery, the *Defendant pleaded a Releaſe*, the *Plaintiff denied it* and *ſo to Iſſue.* And the *Record and all the Action, and Proceſs was ſent into B. R. to try and* there the *Plaintiff was Nonſuited* and *brought a new Scire facias there*, and well; for there was the Record after the ſending it out of Chancery, and not in Chancery, and *econtra if* the Chancery had ſent *only the tenor of the Record.* Note a Diverſity; and ſo Note that the Chancery ſhall try nothing by Jury, but the King's Bench, and it is ſaid elſewhere that the Chancery ſhall make the Venire facias and ſhall award it to the Sheriff

returnable into B. R. Scilicet coram nobis ubicumque tunc fuerimus in Anglia, for all is the King's. Br. Juriſdiction, pl. 48. cites 24 E. 3. 45.

6. Note, it was agreed that in B. R. the *Record is Placita Coram Rege apud talem locum*, and therefore when a Man pleads a Record of this Court, he ſhall ſhew where the King's Bench then was, becauſe the Day is paſſed, ſo that it is certainly known, but the *Proceſs there is Ubicunque tunc fuerimus in Anglia.* Br. Pleadings, pl. 10. cites 34 H. 6. 27.

11 Rep 65 a. S P. by Coke Ch J. in Dr. Foſter's Caſe, and cites 4 H. 7. 18. and ſays, that with this agrees 15 H. 7. 5. b.

7. If an *Indictment of Forcible Entry* be *remov'd into B. R.* the Juſtices of *B. R. ſhall award Reſtitution*, and yet the Statute of 8 *H.* 6. *cap.* 9. *ſpeaks only of Juſtices of Peace*, but the Reaſon is becauſe they have ſovereign and ſupreme Authority in ſuch Caſes; Per Cur. 9 Rep. 118. b. cites 7 E. 4. 18. a. and 4 H. 7. 18. and ſays, that according to this Reſolution the Juſtices of B. R. write, according to the ſaid Act, to the Juſtices of Gaol Delivery in the City of London, before whom the Principal was who certify the Record &c.

8. *Murderer* was *committed to the Fleet* by the Juſtices of B. R. *becauſe the Marſhal had married the Siſter of the Offender*, and it was ſaid, that they might have committed him to Newgate. Per Cat. the Fleet is not for Felony nor Treaſon. But per Fairfax, ſuch a Preſident was in the Time of June. And the ſame Law where the Marſhal is appeal'd of Felony. And the Fleet is for the Chancery, Common Pleas, Exchequer, and to thoſe Courts the Warden is Officer, and to the Star Chamber, and to the Palace; and per Cat. he may be committed to any Sheriff of England, becauſe all thoſe are Officers immediate to this Court, quære inde of the Sheriff of another County where the Offence was not done. But it ſeems that if the Juſtices by their Diſcretion command it, it ought to be obey'd. But per Fairfax, the Sheriff of Middleſex is not Officer to this Court, but of Thiugs done within the ſame County, and the ſame ſeems to be of other Sheriffs. Br. Impriſonment pl. 80. cites 21 E. 4. 71.

9. If the Juſtices of B. R. *perceive, that any Indictment is to be remov'd into that Court by Practice, or for Delay*, the Court *may refuſe to receive the ſame* before it is entred of Record, and remand the ſame back for Juſtice to be done. 4 Inſt. 74. cap. 7.

10. A *Scire Facias was ſued in Chancery upon a Recognizance, where the Parties were at Iſſue* whereupon *all the Record was remov'd into B. R.* where after Trial *Judgement was arreſted for miſawarding the Ven. Fac.* and the Parties would re-plead. And by Coke Ch. J. if only a Tenor of the Record had been remov'd into B. R. the Repleader might be in Chancery, but in this Caſe the whole Record is remov'd hither, and *when this Court is poſſeſs'd of a Record, it ſhall never be remanded into Chancery*; For the Chancery is the younger Brother, and the Books are, that a Writ of Error lies here on a Judgment in Chancery, and therefore it ſeems that the Repleader ought to be here, and ruled accordingly. Roll. Rep. 287. pl. 5. Hill. 13 Jac. B. R. Briſtol (Bp.) v. Proctor.

11. Where *Error* is brought *upon a Judgment given in Ireland*, the *Record remains in Ireland*, and B. R. has only the Tranſcript; but *otherwiſe* it is *upon Error brought* in B. R. *of a Judgment in C. B.* For there the Record itſelf is ſent into C. B. and they write Tranſmittitur in the Margin; Per Doderidge J. 2 Roll. Rep. 274. Hill. 20 Jac. B. R. in Leonard's Caſe.

12. An *Indictment of High Treaſon found in B. R. may be ſent down into the Country to be tried there by Niſi Prius at the next Aſſiſes*; Per Dolben and Raymond J. (Abſente the Ch. J.) and that ſo is 4 Inſt. 73. and the *Statute of* 14 *H.* 6. *cap.* 1. gives Power to the Judges of

Niſi

Niſi Prius, to give Judgment and Award Execution in Caſes of Felony and Treaſon, which cannot be but where ſuch Offences are tried by Niſi Prius; For Quatenus Judges of Niſi Prius, they cannot give Judgment in Caſes not legally coming before them; as *for Felony and Murder*, Indictments remov'd into B. R. concerning theſe Offences *may be ſent down to be determined by Virtue of* 6 *H.* 8. *cap.* 6. *but that Statute extends not to Treaſon.* Raym. 367. Paſch. 32 Car. 2. B. R. Sir Miles Stapleton's Caſe.

13. It was moved for a peremtory Mandamus after a Verdict in C. B. in an Action on the Caſe for a Falſe Return to a Mandamus, to inrol a Chapel upon the Act for Liberty of Conſcience; to which it was returned, that this was a conſecrated Chapel of Eaſe for the Neceſſary Uſe of the Inhabitants of ſuch a Pariſh; but Holt Ch. J. ſaid, that they *could not take Notice here of a Verdict in C. B.* and the Verdict ought to be, as he thought, here in B. R. and therefore he did grant the Motion. Skin. 670. pl. 8. Mich. 8 W. 3. B. R. the King v. Green.

(H) The Court of King's Bench. *In General.*

1. HILL. 2 Hen. 5. B. R. Rot. 65. Proclamation that none ſhould carry Arms within the Court **exceptis Domino vel Milite ſecundum eorum utriuſque Gradum & Statum, ſoluan Gladium.**

2. Hen. 3. ſate in Perſon with the Juſtices **in Banco Regis, at the Arraignment of Peter de Rivallis.** Speed. 521. The Kings in former Times have perſonally ſat there. Co. Litt. 71. b.

3. At another Time **the ſame King ſate there in Perſon at the Arraignment of Hubert Earl of Kent.** Speed 524.

4. Hill. 19 Ed. 3. B. R. Rot. 35. The King granted the Cuſtody of the Seal to ſeal Writs de B. R. **to Matthew Conaceem** for 16 Years, in ſatisfactionem decem mille librarum domino Regi præ manibus ſolutarum, **and a Seal delivered to the Chief Juſtice by the Chancellor to ſeal the ſaid Writs, who delivered one Part to the Deputy of Matthew, and reſerved the other Part to himſelf.**

5. Otto de Holland was brought to the Bar **coram Rege aſſidentibus Cancellario, Theſaurario, Comitibus Arundeliæ & Huntingdoniæ, & aliis & Juſticiariis de Banco.** His Offence was, That he ſuffered the Count de Ewe, Marſhal of France, to go armed to Calice againſt the Command of the King, the ſaid Count being a Priſoner of the King, and committed to the Cuſtody of the ſaid Otto, **and Otto non potuit dedicere, ideo committitur Mareſchallo.**

6. 28 *E.* 1. *S.* 3. *cap.* 5. *The Juſtices of his Bench muſt follow the King.*

7. In Ed. 1. time the Style of the King's Bench was *Coram Rege & Concilio*, and the Writ de Ideota Examinando, commands the Ideot to be brought *Coram Nobis & Concilio noſtro apud Weſtm.* and anciently Bills were ſo directed in Chancery, but ſince have been altered. Per Hale Ch. J. Vent. 158. Mich. 23 Car. 2. B. R. at the End of the Caſe of Fiſher v. Patten.

8. *Miſdemeanor in an Officer of an Inferior Court* is a Contempt of B. R. per Holt Ch. J. 12 Mod. 374. Paſch. 12 W. 3. cited one Starkey's Caſe, Steward of Windſor Court.

(I) The

(I) The General *Juriſdiction* of the Court [of B. R.]

1. IF A. be elected Conſtable in a Leet, and before he is ſworn the Juſtices of Peace at a Seſſions diſcharge him, becauſe he is a Maſter of Arts, and elect and ſwear B. to be Conſtable there; A Writ in this Caſe may be granted out of the King's Bench to the Juſtices to diſcharge B. and to ſwear A. becauſe the proper Place to elect a Conſtable is the Leet, and this was no Cauſe to diſcharge his Election. Hill. 10 Car. B. R. *Herſon's Caſe*, who was elected in the Leet of the Biſhop of Winton in Waltham Wolbeck in Comitatu Southampton per Curiam, ſuch a Writ granted Trin. 6 Car. B. Regis. *Arundel's Caſe* in Comitatu Dorſet', like Writ alſo granted.

There is no Precedent of a Writ of Reſtitution for a Conſtable, per Williams J. to which the whole Court agreed clearly, and ſo in like Caſe, an Order was made by Rule of Court for the reſtoring, placing and ſettling of the firſt Conſtable, (choſen according to Cuſtom by the Vill, and approved and ſworn by the Lord, but removed by the Juſtices of the Peace) in his Place again.

2. If A. a Conſtable of a Hundred ſerves in the Office for one Year, and at the End of the Year, the Court-Leet for the Hundred, according to Cuſtom (*) preſent B. to be Conſtable, and the Steward and Jury refuſe to ſwear B. but continue A. for another Year; A Writ may be awarded out de B. R. directed to the Steward to ſwear B. and if there be good Cauſe to refuſe him, this may be returned to the Court. P. 14 Car. B. R. ſo done in the Caſe of one Braine, the Conſtable of the Hundred of Kenſham in Comitatu Somerſet.

* Fol. 536. The Port-Reeve of Yeovil in Com'. Somerſet had always been uſed to be elected to continue in his Office for a Year, and at the Year's End a new Port-Reeve to be elected and ſworn in the Leet by the Steward of the Lord of the Manor, but upon ſome Difference between him and the Lord was refuſed to be done, whereupon Proceſs iſſued out of B R. commanding the Oath to be tendred to the Port Reeve; For the Court of B. R. is the Supreme Court which ought to do Juſtice to all the King's Subjects. 2 Roll Rep. 82. Paſch. 17 Jac. B. R. the Port-Reeve of Yeovil's Caſe.

3. If a Man by the Cuſtom of a Town is to ſerve in the Office of Tythingham for one Year in his turn by the Cuſtom of the Town, and he ſerves in the Office for two Years, and after the Homage there continue him for a third Year; A Writ may be awarded out of this Court to diſcharge him, and to elect another. Mich. 15 Car. B. R. *Bradburn's Caſe*, per Curiam, ſuch Writ granted to the Town of Penton in Comitatu Devoniæ.

S. P. per Shard, and the Caſe was, that Eſcape of Felons was preſented in B. R. where the Statute wills, that ſuch Things ſhall be preſented in Eyre, and the Parties were compelled to anſwer. Br. Eſcape pl. 21. cites S. C. —— 2 Hale's Hiſt. P. C. 4. cap. 1. cites S. C. —— 9 Rep. 118. a. cites S. C. that *it is more than Eyre*; For they ſhall examine the Errors of the Juſtices in Eyre, Goal Delivery, and Oyer and Terminer. And Juſtices of B. R. *have a Diſtinct and Supreme Court*, and Juſtices of Goal Delivery, and Oyer and Terminer have other Diſtinct and Subordinate Courts.

4. B. R. *is Eyre and more than Eyre*, for if Commiſſion of Eyre ſit in one County, and the King's Bench comes there, the Eyre ſhall ceaſe. Br. Juriſdiction, pl. 66. cites 27 Aſſ. 1.

5. If *Writ of Error* be *ſued upon Formedon*, and Judgment given in it the Plea ſhall be held on in B. R. notwithſtanding the *Statute quod Com-*

Communia Placita non ſequantur Curiam noſtram &c. Br. Juriſdiction pl 78 .cites 21 E. 4. 81.

6. Juſtices of the King's Bench, during the Time that they ſit in the County, may *Command the Juſtices of the Peace that they do not Arraign the Goal* upon Pain and Fine. Br. Judges pl. 28. cites 21 H. 7. 29.

Br. Juriſdiction. pl. 54 cites S. C. But if they proceed before ſuch Command comes, then well.

7. Note that the *Juſtices of B. R. are Juſtices of Oyer and Terminer* of Felony Treaſons &c. *by the Common Law*, and Cuſtom of the Realm as was agreed, Hill. 3. M. 1. in the Caſe of Ben. Smith upon the Statute of 2 E. 6. c. 24. of Felony in one County, and Acceſſory in another County. Br. Oyer and Determiner pl. 8 cites 3 M. 1.

8. Albeit *when the Term begins, all Commiſſioners of Oyer and Terminer in the County, where the King's Bench ſit, be ſuſpended during the Term*, yet if an Indictment be found before ſuch Commiſſioners before the Term, there *may be a ſpecial Commiſſion made to Commiſſioners in the ſame County, ſitting the King's Bench in that County, to hear and determine the ſame during the Term*; For the King's Bench hath no Power to proceed thereupon, till the Indictment be before them. And it is the better, if the ſpecial Commiſſion bear Teſte after the beginning of the Term. Note a Diverſity between general Commiſſions of Oyer and Terminer, and ſuch a ſpecial Commiſſion; And the Court of *King's Bench may be adjourned, and in the mean Time the Commiſſioners may ſit there.* 3 Inſt. 27. cap. 2.

9. This Court hath *not only Juriſdiction to correct Errors in Judicial Proceeding, but other Errors* and Miſdemeanors *extrajudicial tending to the Breach of the Peace*, or *Oppreſſion of the Subjects*, or *raiſing of Faction, Controverſy, Debate* or any other Manner of Miſgovernment; ſo that no Wrong or Injury either Publick or Private, can be done, but that this ſhall be reform'd or puniſh'd in one Court or other by due Courſe of Law. 4 Inſt. 71. cap. 7.

10. *As if any Perſon be committed to Priſon*, this Court upon Motion ought to *grant an Habeas Corpus, and upon return of the Cauſe* do Juſtice, and *relieve the Party wronged.* And this may be done though the Party griev'd hath no Privilege in this Court. 4 Inſt. 71. cap. 7.

11. It granteth *Prohibitions to Courts Temporal and Eccleſiaſtical*, to keep them within their proper Juriſdiction. 4 Inſt. 71. cap. 7.

12. Alſo this Court may *Bail* any Perſon *for any Offence whatſoever.* 4. Inſt. 71. cap. 7.

13. And if a *Freeman* in City, Burgh, or Town Coporate be *diſfranchiſed unjuſtly*, albeit he hath no Privilege in this Court, yet this Court may relieve the Party, as it appeareth in James Baggs's Caſe, & ſic in ſimilibus. 4 Inſt. 71. cap. 7.

14. *Negative Words in an Act of Parliament, ſhall not in many Caſes bind the Court of B. R.* becauſe the Pleas there are Coram ipſo Rege, per Coke Ch. J. 11 Rep. 64. b. Mich. 12 Jac. in Dr. Foſter's Caſe, and cites 21 E. 3. 55. b. and 21 Aſſ. 12. the Abbot of Weſtminſter's Caſe.

Mod. Rep. 45. in pl. 98 Per Keeling. you cannot ouſt the Juriſdiction of this Court without particular Words. And Twiſden J. ſaid, that he had known it ruled in 23 Car. 1. that the Statute of 13 Eliz. cap 9 where it is ſaid, that there ſhall be no Superſedeas &c. hath no Reference to this Court but only to the Chancery.

15. So when a *Statute creates a new Law and aſſigns certain Juſtices to execute it*, though the *Juſtices of B. R.* are not expreſsly authoriz'd by the Act, yet they *may execute it* as the Statute 8 H. 6. cap. 9. gives Power to Juſtices of Peace to make Reſtitution, and therefore Juſtices of Oyer

and Terminer Goal Delivery &c. ſhall not make Reſtitution, and ſo reſolv'd as has been ſaid, yet if the Indictment be remov'd into B. R. Coram Rege, they ſhall award Reſtitution; Per Coke Ch. J. 11 Rep. 65. a. cites is as reſolv'd on Argument, 4 H. 7. 18. b.

16. The Court of B. R. have Power to *ſend a Priſoner to any Sheriff in England.* Sid. 145. pl. 2. Trin. 15 Car. 2. B. R. the King v. Mendall.

17. And commanded a Sheriff *by Parol* to take a Priſoner, and then directed him (being Sheriff of Middleſex) to go to the Recorder of London (who was then preſent in Court) for a Warrant. Sid. 146. Trin. 15. Car. 2. B. R. the King v. Mendall.

18. King's Bench *may Bail for High Treaſon*, but it is a ſpecial Favour, and not done without the Conſent of the Attorney General. And they may likewiſe Bail for *Murder*, but it is ſeldom done, and not without a ſpecial Reaſon; and it is not a ſufficient Reaſon that it was found Manſlaughter before the Coroner, for it may be afterwards found Murther; per Cur. Cumb. 111. Paſch. 1 W. & M. in B. R. Anon.

(K) [*King's Bench.*]
How, and in what Manner the Court may *proceed.*

Cro E. 694 pl. 5 Watts v. Brayns, Mich. 41 Eliz. B. R. the S. C. and Ibid 778. pl. 12 S. C. Mich. 42 & 43 Eliz. B. R. but in neither of the Places does S. P. appear —— * Cro C. 531. pl. 10. Pigot v. Pigot S. C. and S. P. But per Maynard Arg. if they had not pleaded the ſame Term, or if they had pleaded any other Plea than Not Guilty, ſo as there had been an Adjournment to another Term, then the Declaration ought to be filed, and of that Opinion was all the Court, and Hoddeſdon the Secretary ſaid, that ſo was the uſual Courſe. —— Jo. 425 pl. 10 S. C. and S. P. accordingly, and cited the Caſe of Watts v. Brains —— S. C. cited 2 Roll Rep. 478.

1. IN an Appeal **of Murder or other Offence,** if the Plaintiff appeal him in Cuſtodia Mareſchall, and **the** Defendant is arraigned, and pleads the ſame Term, and the ſame Term alſo is tried; **this may be well done,** without any Bill filed, **but only upon the Declaration.** 43 **El.** *Brayne's Caſe* **adjudged. Hill. 14 Car. B. R.** * *Pigot's*, **per Curiam agreed.**

2. So if **the Defendant is arraigned, and pleads the ſame Term, but is** not tried till another Term, **yet this may be well done upon a Declaration without any Bill filed. Hil. 14 Car. B. R. between** *Pigot and Pigot*, **per Curiam adjudged, this being moved in Arreſt of Judgment after the Defendant was found Guilty at the Bar of petit Treaſon for killing her Husband, and ſhe adjudged thereupon to be burnt. Intratur, Trin. 14 Car. Rot. 685. and ſaid to be the Practice of the Court.**

3. But **in an Appeal, if the Defendant be** arraigned in another Term, then the Defendant appears, **there** ought to be a Bill filed; **in the ſaid Caſe of Pigot ſaid to be the Courſe.**

See 2 Inſt. 255, 256

4. 3 *E.* 1. *cap.* 46. Enacts that *it is alſo provided and commanded by the King, that the Juſtices of B. R. at Weſtminſter, from henceforth ſhall decide all Pleas determinable at one Day before any Matter be arrained, or Plea commenced the Day following, ſaving that their Eſſoins ſhall be entred, judged and allowed; yet by Reaſon thereof, let none preſume to aſſent himſelf at the Day to him limited.*

Ibid pl. 65. cites 26 Aſſ. 5. Contra, that it is

5. *Aſſiſe* was *brought in B. R. in Suffolk*, and *pending the Aſſiſe the Bank removed from Suffolk to Weſtminſter*, and yet they ſhall proceed in the Aſſiſe, and awarded Nili Prius to the Juſtices of Aſſiſe in Suffolk to try

try the Iſſue, for * *that which comes into B. R. ſhall not go out*; Quod Nota. Br. Juriſdiction, pl. 62. cites 19 Aſſ. 4.

not denied, but that by ſuch Removal the Aſſiſe is *diſcontinued.*

* S. P. Ibid pl. 69. cites 29 Aſſ. 43. per Shard.

6. *Nuſance* was *found by Commiſſion, and* was *certify'd by Writ in B. R.* and Precept made againſt the Tenants returnable Sabbato poſt 15 Trin. which was out of the Term. Skip. ſaid *we cannot make Proceſs out of the County where the Bank ſits unleſs by Writ*, and give Day in the Term and to the County, and Thorp conceſſit, and ſaid, that they may receive Indictments after the Term, and make Proceſs ſitting the Bench, (and ſo ſee that the King's Bench *may ſit out of Term*) and ſo it was done, and he put to anſwer to it which was in this County, viz. Middleſex, and after they pleaded to Iſſue, and Virdict was taken in St. Clement's Church out of the Place, and well, and they may take Verdict by Candle-Light, and if they are to remove they may carry the Jury with them in Carts if they cannot agree, and ſo may the Juſtices of Aſſiſe. Br. Juriſdiction, pl. 105. cites 19 Aſſ. 6.

7. At the Commencement *when the King's Bench ſits in Pais*, they ſhall make Proclamation *that no Fair nor Market* be held in the County ſo long as they ſit, *nor* that any *Court Baron be held during their Seſſions, unleſs in Writ of Right, nor no County* held, *unleſs of Exigents, and* ſhall make Proclamation of *the Aſſiſe of Bread, Ale, Wine, and all other Victuals*, and per Shard, he who ſells Wine contraty to the Aſſiſe of Law ſhall forfeit the Tunnel. Br. Juriſdiction, pl. 67. cites 27 Aſſ. 22.

8. When the King's Bench *comes into a County, the Aſſiſe ſhall be adjourned there*, and this ſeems to be the Reaſon, becauſe no Juſtices of Aſſiſe are in the County where the King's Bench ſits. Br. Juriſdiction, pl. 68.

As in Aſſiſe in the County of Surry, they were at Iſſue upon *Ne Unques Accouple* in lawful Matrimony, and *certified for the Plaintiff*, and after the *King's Bench came into the ſame County, ſo that all the Aſſiſes were adjourned there*, and the *Plaintiff came and ſet forth the Record ſub pede Sigilli, and pleaded the Plea upon all the Record, and prayed the Aſſiſe, and all came there by Certiorari & Mittimus* &c. Br. Juriſdiction, pl. 68 cites 28 Aſſ. 52.

9. Note, that a Precedent was ſhewn and read in Court, Trin. 2 H. 4. Rot. 2. one *M. L. that was indicted* in the County of Surry before the Juſtices of Peace, *becauſe that he feloniouſly entred the Houſe of J. S. and* feloniouſly *ſtole* 18 *d.* Upon not Guilty pleaded, the *Jury found* a ſpecial Verdict, *that the ſaid M. L and one J. D. and J. N. de Cognitione ſua were Common Players at Dice, and that they uſed to play with falſe Dice, and Cozen the King's Liege People at play; and that they entred into the Houſe of the ſaid J. S. and deſired him to play with them at Dice, and with falſe Dice they won of him* 12 *d. ob.* And if this be Felony, they pray'd the Diſcretion of the Court. And this Indictment and Verdict was remov'd into the King's Bench, and thereupon Judgment was entred, that although this was not an Offence for which he ſhould loſe Life or Member, yet becauſe it was found that he was a Common Cozenor of the King's People, it was ordered *that he ſhould be ſet upon the Pillory there ſeveral Days in the Strand, and three ſeveral Days in Southwark*, where the Offence was committed. Note, that Noy ſhew'd this Preſident to the Court, and preſently the Roll was view'd and read; And Montague commanded a Copy to be taken thereof, as a good Preſident for the Juriſdiction of the Court, and Government of the Common Wealth. Cro. J. 497, 498. pl. 4. Mich. 26 Jac. B. R. cites Trin. 2 H. 4. Leeſer's Caſe.

9. Bill of Præmunire was *brought* againſt J. N. *in B. R.* for the King, and he pleaded to the Bill, becauſe the *Statute it, that ſuch Suit ſhall be by Bill before the King and his Council by Præmunire*, which Bill before the King and his Council is *intended before him and his Lords, and not before him*

him in his Bench, and *Præmunire is intended by Writ original*, and not by Bill in B. R. by which the Plaintiff made Bill of Præmunire againſt him in Cuſtody of the Marſhall, and then he was compell'd to anſwer. Br. Præmunire, pl. 1. cites 27 H. 6. 5. But in Anno 22 H. 8. it was common that ſeveral Clerks were compell'd to anſwer to Bills of Præmunire in B. R. who were not in Cuſtody of the Marſhal, Quod Nota.

2 Hale's Hiſt. Pl. C. 3. Cap. 1. ſays that if Iſſue be join'd the the Tranſcript may be ſent down to be tried by Niſi Prius, but the original Record remains in B. R. and cites S. C.

10. M. and others were *indicted* of Felony in the High Way in C. B. *for Robbery* of one E. K. with Gaggs, and the *Indictment and the Body were remov'd into B. R.* and there arraigned, and *pleaded Not Guilty, and tried*; But *afterwards a Writ was ſent with the Body into the Country with Niſi Prius, to try him in the County of B.* Br. Corone pl. 230 (231) cites 5 Mar. Mannington's Caſe; And ſays, that this is the common Courſe, ſo to remove the Body, and the Record out of B. R. into the Country again.

9 Rep. 118. b. Trin. 10 Jac. in Lord Sanchar's Caſe. —— Co. Litt. 134. b. S. P —— 2 Hale's Hiſt Pl C. 3 cap. 1. S. P.

12. If a Man be *indicted of Treaſon or Felony in the County where the King's Bench doth ſit*, the *Venire Facias for returning of the Jury need not have 15 Days between the Teſte and the Return*; nay, the *Entry may be Ideo immediate venit inde Jurata* &c. *But if* the Indictment be *taken in any other County, and removed into the King's Bench, there ought to be 15 Days* between the Teſte of the Venire Facias and the Return. 2 Inſt. 568.

Br Oyer and Determiner &c. pl 8. cites 3 Mar 1. —— 4 Inſt. 73 cap. 7. cites 7 E. 4. 18. 4 H. 7. 18. 14 H. 7. 21. —— 2 Hale's Hiſt. Pl. C. 4. cap 1. S. P.

13. The *Juſtices of B. R. are the Sovereign Juſtices of Gaol-Delivery, and of Oyer and Terminer*; Reſolved. 9 Rep. 118. b. Trin. 10 Jac. in Ld. Sanchar's Caſe.

14. One *offered himſelf to be Bail* in an Action upon the Caſe before Juſtice Whitlock, and *affirmed upon his Oath he was a Subſidy Man*, and aſſeſſed 4 l. in the Subſidy-Book; *But afterwards*, upon further Examination, he *confeſſed he was not* a Subſidy-Man, and alſo confeſſed he had been Bail in other Actions, and had ſworn he was a Subſidy-Man, whereas now he confeſſed he was not. He was by the Judgment of the Court *committed to Priſon, and to ſtand upon the Pillory*, with a Paper mentioning his Cauſe, viz. for Falſe Bail. Cro. C. 146. pl. 25. Mich. 4 Car. Royſon's Caſe.

15. S. having *forged the Hand of the Chief Juſtice to ſeveral Bails*, and being *brought into Court*, and examined, *confeſſed the ſame*. A *Record was inſtantly made* of the Confeſſion, *and Judgment given to ſtand in the Pillory* ſeveral Times, and to appear at the Bar with a Paper in his Hat ſhewing his Offence; and this without any Information, but only on the Record of his Confeſſion. Lev. 155. Hill. 16 & 17 Car. 2. B. R. Sherwood's Caſe.

(L) The King's Bench Jurisdiction. *Of what Actions* they may *hold Plea originally.*

1. AN Action which is a Common Plea **does not lie in Banco Regis.** 17 Ed. 3. 50. b. — Fitzh. Quare Incumbravit, pl. 1. cites S. C.

2. As a Quare Impedit **does not lie in the King's Bench, because it is a Common Plea.** 17 Ed. 3. 50. b. — 4 Inst. 71. cap. 7. says, that B. R. may hold Plea by Writ out of the Chancery of all Treſpaſſes done Vi & Armis, of Replevins, of * Quare Impedit &c.

* Ibid. cites Trin. 19 E. 3. Coram Rege Rot. 56. Linc.

3. So a Quare Incumbravit **does not lie in the King's Bench, because this is a Common Plea.** 17 E. 3. 50. — Fitzh. Quare Incumbravit, pl. 1. cites S. C.

4. **An Action** upon the Statute of Wincheſter of Robbery **does not lie by Original in Banco Regis.** Mich. 37 Eliz. B. R. between * *Sadler and Morſe* **admitted, because it is a Common Plea; but** Paſch. 15 Car. B. R. between *Sir John* † *Compton* **and the Hundred of** *Woking*, **in the County of Surry, admitted, and a Trial and Verdict thereupon at Bar, and Judgment accordingly, but no Exception taken to it.** — * See (N) pl. 1. S. C. † Mar. 10, 11. pl. 28. S. C. but S. P. does not appear —Noy 155. the Lord Compton's Caſe, ſeems to be S. C but S. P. does not appear.

5. **An Action of** Debt **lies in Banco Regis** againſt a Sheriff or Gaoler in Cuſtodia Mareſchalli for an Eſcape, upon the Statute of Weſtminſter 2. and 1 R. 2. **though the Statutes limit the Action to be brought by Writ of Debt, which is by Original, for this is** within the Equity of the Statutes. Mich. 7 Car. B. R. between *Brightwait and Taylor*, **and others, Sheriffs of Briſtol, adjudged by a Writ of Error in Cam. Scacc. where this Error was aſſigned, and there ſaid, that there were were many Precedents accordingly.** — This Court hath Power to hold Plea by Bill for Debt, Detinue, Covenant, Promiſe, and all other Perſonal Actions, Ejectione Firmæ, and the like, againſt any that is in Cuſtodia Mareſchalli, or any Officer, Miniſter, or Clerk of the Court; and the Reaſon hereof is, for if they ſhould be ſued in any other Court, they ſhould have the Privilege of this Court; and leſt there ſhould be a Failure of Juſtice, (which is ſo much abhorred in Law) they ſhall be impleaded here by Bill, though theſe Actions be Common Pleas, and are not reſtrained by the ſaid Act of Magna Charta, ubi ſupra. Likewiſe the Officers, Miniſters, and Clerks of this Court, privileged by Law in reſpect of their neceſſary Attendance in Court, may implead others by Bill in the Actions aforeſaid. 4 Inſt. 71, 72.

6. A Bill in Nature of a Præmunire **lies in Banco Regis in Cuſtodia Mareſchalli &c.** upon the Statute of Ed. 3. cap. **though the Statute be, That he ſhall have Day containing the Space of two Months by Garniſhment, which implies, that it ſhould be by Original. 2 R. 3. 17. b.** — Fol. 537.

7. **An Action** upon the Statute of 2 H. 4. cap. 11. **lies by Bill in Banco Regis,** for ſuing in the Court of Admiralty againſt the Statutes of 13 R. 2. and the ſaid 2 H. 4. **though the Statute of 2 H. 4 ſays, That he ſhall ſue by Writ ſuper Caſum. Tr. 17 Car. B. R.** between — Cro. C. 603 pl. 8. Ball v. Trelawny, it was objected,

between *Babb and Trelawny* adjudged. Intratur P. 17 Car. Rot. 137.

that the Suit was by Bill, and not by original Writ, as the Statute appoints ; but in regard it was returned that he was in Custodia Mareschalli, and that he could not otherwise have his Remedy, it was held to be well enough.

8. An Action by a common Informer upon the Statute of 7 Ed. 6. cap. 5. for selling Wines in his House against the Statute, by which he forfeited 10 l. for every time, may be brought in Banco Regis by Bill of Debt, though by the Statute of 18 El. cap. 5. it is enacted, That no Person shall be permitted or received to sue against any Person or Persons, upon any penal Statute, but by way of Information, or Original Action, and not otherwise ; for by the Statute of the 7 Ed. 6. cap. 5. the Penalty may be recovered by Action of Debt, Bill, Plaint, or Information, in any of the King's Courts of Record ; and it was not the Intent of the Statute to oust the Court of King's Bench of Jurisdiction against the Statute of 7 E. 6. but this extends only to Plaints in Inferior Courts, and removed afterwards, and the Words of the Statute of 18 El. are not by Original Writ, but by Original Action, and this Bill of Debt is an Original Action within the Words. Tr. 1653. between *Hill and Pierce de Chaier* adjudged per Curiam, this Matter being moved in Arrest of Judgment. Intratur P. 1653. Rot. 90. and it was said there were many Precedents accordingly.

Stv. 381. Hill v. Dechair, S. C and Roll said, that the constant Course is, that the Party being in Custodia Mareschalli may be proceeded against by Bill, and we will not suffer this Court to be excluded by obscure Words in the Statute, and so Judgment given for the Plaintiff Nisi &c.

9. If a Mayor or Sheriff, after an Arrest, refuses sufficient Bail, against the Statute of 23 H. 6. of Sheriffs, by which the Penalty of 40 l. is given, one Moiety to the King, and the other Moiety to the Party that will sue ; In this Case no Action of Debt lies by Bill in Banco Regis, because the Statute of the 18 Eliz. is, That no Person shall be permitted to sue upon any penal Statute, but by way of Information or original Action, and not otherwise. But note, it is not limited by the Statute of 23 H. 6. how the Penalty shall be recovered, but generally that he shall forfeit 40 l. of which the King shall have one Moiety, and he that will sue, the other Moiety. Co. 3. Institutes 194. and Co. 6. 19. b. *Gregory's Case*, where it is cited. P. 29 & 30 El. coram Rege, between *Widiston and Clerk* adjudged.

Cro. E. 76. pl. 36 Widow v. Clerk S. C. adjudg'd for the Defendant, and it cannot be helped by the Statute 18 Eliz for Jeofaile ; for this is not Matter of Form, but Substance, by misconceiving the Action judged accordingly. —— Mo. 247. pl 390. Udeson v the Mayor of Nottingham, S. C. adjudged accordingly. —— S. C. cited by the Name of Woodson v. Clerk as adjudged. Mo. 412. pl. 565.

10. Bill of *Conspiracy* was maintained *in B. R.* because the Plaintiff was indicted of Trespass ; Quod Nota, as well as if it had been of Felony; for he was thereof acquitted. Br. Bille, pl. 17. cites 3 Ass. 13.

11. Assise of *Mortdancestor* was brought in B. R. and no Exception was taken but that it may well be brought, and Assise of *Novel Disseisin* may well be brought there. Br. Jurisdiction, pl. 121. cites 30 Ass. 25.

12. *Debt* brought *in B. R. for* 16 *s. Costs of Suit given in an inferior Court upon a Nonsuit upon the Statute of* 23 *H.* 8. It was moved, that no *Action did lie, against the Statute of Glouncester*, which is *that no Action shall be brought here for any Sum under* 40 *s.* But since the Costs are given by a latter Statute, it was held clearly that they are recoverable by Action of Debt in B. R. and Judgment for the Plaintiff. Cro. E 96. pl. 11. Pasch. 30 Eliz. B. R. Harward v. Furborne.

13. The

13. The *Juſtices of B. R. are the ſovereign Coroners of England*, and therefore where the Sheriff and Coroners of the Land may receive Appeals by Bill, a fortiori the Juſtices of B. R. may do it. 4 Inſt. 73. cap. 7.

The Chief Juſtice of B. R. is the ſovereign Coroner of all England; 1658.——

Per the Reporter. 4 Rep. 57. b.——S. P. by Glyn Ch. J. 2 Sid. 101. Trin. 2 Hale's Hiſt. Pl. C. 5. cap. 1. S. P.

(M.) Of *what Actions* they may hold Plea *for a collateral Reſpect.*

1. If a Man recovers in a Quare Impedit in Banco, and after this is removed in Banco Regis by Writ of Error, a Quare incumbravit does not lie there, **though this does not lie without a Judgment, becauſe this** is a new Original, and a Common Plea in itſelf. 17 E. 3. 50. b.

2. An Action de valore Maritagii by the Lord lies againſt the Heir in Cuſtodia Mareſchalli. **Mich. 14 Car. B. R. between** *Arundell and Saunders*, **adjudged upon a Demurrer to a Declaration, but this was not moved; but Mr. Hoddeſdon ſaid to me, That he had divers Precedents accordingly, that it lies in Banco Regis, Intratur, H. 13 Car. Roll. 1266.**

Cro. C. 502, 503. pl 3. S. C. but reports the Action brought to be Treſpaſs upon the Caſe, and it was mov'd for the Defendant, that the Declaration was ill, it being in an Action on the Caſe, whereas it ought to be in Valore Maritagii; and the Court doubted of this Point becauſe there is a ſpecial original Writ De Valore Maritagii.

3. If a Man ſues a Latitat out of B. R. to the Intent to declare againſt the Defendant, after Arreſt in Cuſtodia Mareſchalli, in an Action of Debt, and the Sheriff arreſts him and ſuffers him to Eſcape, **an Action lies againſt the Sheriff, ſhewing this ſpecial Matter, and he ſhall recover his Damages, having Regard to the loſs of his Debt. Tr. 14. Ja. B. R.**

In ſuch Caſe when the Defendant appears and puts in Bail, he is ſuppoſed to be in Cuſtodia Mareſchalli, and declares againſt him in Cuſtodia &c. but it is not ſo in any other Court. Cro. C. 330. in pl. 14. Mich. 9 Car. B. R.

4. If after an Arreſt upon a Latitat the Defendant tenders Amends **after the Arreſt**, for an involuntary Treſpaſs, according to the Statute 21 Jac. c. 16. **this is not good, upon an** Averment that the Latitat was ſued out to the Intent to declare in Cuſtodia Mareſchalli for this Treſpaſs, **for otherwiſe a Man ſhall be defeated of his Coſts by ſuch Tender. Tr. 8 Car. B. R. between** *Watts and Baker*, **adjudged upon Demurrer.**

Fol. 538.

Cro. C. 264. pl. 11. S. C. reſolv'd, that the Tender came too late, for as well as a Tender after an original Writ comes too late, ſo it is after an Arreſt upon a Latitat; For the Tender by the Statute is intended to be immediately after the Treſpaſs, and before any Suit commenc'd.

5. In an Action of *Treſpaſs* brought here *againſt the Defendant in Cuſtodia Mareſchalli*, in the Declaration the Treſpaſs was *laid to be done in Cornwall*, the Defendant *pleads* in abatement of this Action, and ſets forth *the Charter of E. 1. granted unto the Stannery Court, thereby enabling the Stannery Workers to plead there, and there to be impleaded* in the Stannery Court, and therefore prays the Benefit, and the Priviledge of this, to have the Trial there; againſt this it was urged, that the Court here is to hold Plea of this; notwithſtanding their Charter; for this Court may hold Plea of Debt, Detinue and Covenant, notwithſtanding

So where *B killed W. within the Cinque Ports*, and this was Murder D. *the Widow of W did declare here againſt him in Cuſtodia Mareſchalli*,

the Charter was *pleaded, that he ought to be tried before the Conſtable of Dover*, but this was not allowed; he was found Guilty and hanged.

ing the Statute of Magna Charta, cap. 11. Communia placita non ſequantur Curiam noſtram &c. he being there in Cuſtodia Mareſchalli, the Plaintiff may here declare againſt him in what Manner he will, and his coming in here is not inquirable. But the Court agreed, that if one be here in Cuſtodia Mareſchalli, he is not to be fetch'd away, and if he ſhould not anſwer here being in Cuſtodia Mareſchalli, none could have Remedy againſt him, and therefore he was ordered to anſwer. 2 Bulſt. 122, 123. Trin. 11 Jac. Parke v. Lock.

2 Bulſt. 123. cites Mich. 40 & 41 Eliz. B. R. Rot. 284. Brayne's Caſe.

Carth. 108. S. C. adjud'd accordingly —— 3 Salk. 359. pl. 1. S. C. —— 2 Inſt. 311. S. P.

6. *Treſpaſs* quare *vi & armis* clauſum fregit, which the *Plaintiff laid to his Damage of* 20*s.* the *Defendant demurred for that B. R. hath not Cognizance* either at Common Law, or by the Statute of Glouceſter, *to hold Plea* in an Action *where the Damages are laid to be under* 40*s.* ſed per Cur. Treſpaſs quare vi & Armis will lie here, let the Damages be what they will; and Judgment for the Plaintiff. 3 Mod. 275. Hill. 1 W. & M. in B. R. Lambert v. Thurſton.

For more of the Court of King's Bench, See Crompt. Juriſdiction of Courts 67. b. to 82. —— 4 Inſt. 70 to 78. cap. 7. —— Prynn's Animadv. on 4 Inſt. 47. —— 2 Hawk. Pl. C. 6. cap. 3.

(N) In what *Actions* they may *hold Plea by Privilege*, for a collateral Reſpect. *In reſpect of the Defendant.*

* Cro. C. 211. pl. 3. S. C. but I do not obſerve S. P. there. —— Jo. 239. pl. 4. S. C. but S. P does not appear.

† See (L.) pl. 4. S. C.

1. AN Action upon the Statute of Wincheſter, of Robbery againſt the Inhabitants of an Hundred, **lies by Bill in B. R. though it is** ſuppoſed by the Bill, that they are in Cuſtodia Mareſchalli, &c. **for the Inhabitants of an Hundred may be impriſoned, and it may be intended that they all were impriſoned. P. 7 Car. B. R. between** * *Hellier* **and the Inhabitants of the Hundred of** *Bemerſh, alias Benhurſt*, **in Comitatu Berks Defendants, adjudged upon a ſpecial Verdict by Admittance, this not being moved. Contra.** 37 El. B. R. **between** † *Sadler and Morſe*, **adjudged.**

—— Gouldsb. 148. pl. 69. Hill. 43 Eliz. it was ſaid to have been adjudg'd in B. R. that an Action upon this Statute againſt the Inhabitants of an Hundred will never lie by Bill, but ought to be ſued by Writ, becauſe the Action is brought againſt Inhabitants, which are a Multitude, and conſequently cannot be in Cuſtodia Mareſcalli, as another private Perſon may be.

(N. 2) The Court of Common Pleas.

* Before this Statute C. B. might have been holden in

* 1. *Magna Charta.* 9 *H.* 3. *cap.* 11. ENacts that the *Common Pleas ſhall* † *not follow our Court, but ſhall be holden in ſome Place certain.*

B. R. and all original Writs retornable in the ſame Bench, and becauſe the Court was holden Coram Rege, and followed the King's Court, and removable at the King's Will, the Returns were Ubicunque fuerimus &c. whereupon many Diſcontinuances enſued, and great Troubles of Jurors, Charges of Parties, and Delay of Juſtice; for theſe Cauſes this Statute was made. 2 Inſt. 21, 22.

† Here it is to be underſtood, a Diviſion of Pleas for Placita are divided in Placita Coronæ, & Communia Placita; *Placita Coronæ* are otherwiſe, and aptly called Criminalia or Mortalia, & *Placita Communia*

Communia are aptly called Civilia; Placita Coronæ are divided into High Treaſon, Miſpriſon of Treaſon, Petit Treaſon, Felony &c. and to their Acceſſaries ſo called, becauſe they are contra Coronam & Dignitatem; and of theſe the Court of C. B. cannot hold Plea. 2 Inſt. 22.

Divers ſpecial Caſes are out of this Statute, 1ſt. The King may ſue any Action for any Common Plea in B. R. for this general Act does not extend to the King. 2dly. If any Man be in Cuſtodia Mareſchalli of B R. any other may have an Action of Debt, Covenant, or the like perſonal Action by B. R. becauſe he that is in Cuſtodia Mareſchalli ought to have the Privilege of that Court, and this Act takes not away the Privilege of any Court, becauſe if he ſhould be ſued in any other Court, he ſhould not, in reſpect of his Privilege, anſwer there, and ſo it is of any Officers, or Miniſters of that Court; The like Law is of the Court of Chancery, and Exchequer. 3dly. Any Action that is Quare Vi et Armis where the King is to have a Fine, may be purchaſed out of the Chancery, returnable into B. R. as Ejectione Firmæ, Treſpaſs Vi & Armis, Forcible Entry and the like. 4thly And a Replevin may be removed into B. R. becauſe the King is to have a Fine, and ſo it is in an Aſſiſe brought in the County where B R. is. 5thly. Albeit originally B. R. be reſtrained by this Act to hold Plea of any Real Action &c yet by a Mean they may; As if a Writ in a Real Action be by Judgment abated in the Court of C. B. if this Judgment in a Writ of Error be reverſed in B. R. and the Writ adjudged good, they ſhall proceed upon that Writ in B. R. as the Judges of the Court of C. B. ſhould have done, which they do in default of others for Neceſſity, leaſt any Party that has Right ſhould be without Remedy, or that there ſhould be a failure of Juſtice, and therefore Statutes are always ſo to be expounded, that there ſhould be no Failure of Juſtice, but rather than that ſhould fall out, that Caſe (by Conſtruction) ſhould be excepted out of the Statute, whether the Statute be in the Negative or Affirmative. 6thly. In a Rediſſeiſin or the like. 2 Inſt. 23.

2. In *Treſpaſs* of Fiſhing in his Piſchary in D. *to the Damage of* 40 *l.* the others ſaid, that he Fiſh'd in S. in his ſeveral Soil, Abſque hoc, that he is guilty of Fiſhing in D. and the others e contra, and *found for the Plaintiff to the Damage of* 8 *d.* Forteſcue ſaid, the Statute is, that the King's Court ſhall not hold Plea under 40 s. but of 40 s. or above. Per Paſton, this is true, as to the Surmiſe of the Plaintiff in his Declaration. But if he declares of 40 s. or more in Debt, Treſpaſs &c. and it is found the Damages 12 d. or the Debt 12 d. or ſuch like, yet the Plaintiff ſhall recover, and ſo it was adjudg'd, and that the Plaintiff ſhould be amerc'd pro falſo Clamore, and yet contra if the Plaintiff had counted of a Sum under 40 s. note the Diverſity. Br. Juriſdiction pl. 40. cites 19 H. 6. 8.

3. Juſtices of C. B. may *hold Plea by Writ of Eſcape in London upon Recovery and Execution in the Cinque Ports*, and may *write to the Conſtable of England*, and to the Conſtable *of Dover*, and to the *Judges of the Admiralty*, and to the *Biſhop in caſe of Bigamy*, *Baſtardy*, *Profeſſion* &c. and that they themſelves cannot hold Plea thereof. And may write *to the County Palatine upon Voucher*, and may write *to the Prince*, *and to the Juſtices of Wales*, quod nota. Br. Judges, pl. 30. cites 30 H. 6. 6.

4. Juſtices of C. B. hearing of Menace and *Impriſonment made to an Attorney of the Bank in inferiori Palatio Regis*, may inquire thereof and ſet a Fine. Br. Judges, pl. 31. cites 32 H. 6. 34.

5. In *Treſpaſs* the Sheriff *return'd upon Capias, that before the coming of this Writ the Defendant was taken and detain'd by Warrant of the Peace in pais upon Riots and forcible Entries, and for ſurety of the Peace* and by the Juſtices of both Benches, if the Plaintiff counts, he *ſhall be by Mainpriſe after Anſwer made, and remitted to the Sheriff to anſwer there of the Riots and Peace*; For C. B. cannot meddle with thoſe, but of the Peace in the ſame County, and ſo he was remitted before the Sheriff in Pais. Br. Retorn de Briefs. pl. 83. cites 2 H. 7. 2. Br Reſponder, pl. 83. cites S. C.

6. Note by the *Statute of Glouceſter cap.* 8. *A Man ſhall not have Treſpaſs in Bank if he does not make Oath that the Goods taken were worth* 40 *s. at the leaſt*, which is alſo recited in a Caſe of Treſpaſs, which was removed by a Recordare out of a baſe Court where the Damages were not 40 s. and therefore ill, per Fitzherbert and the beſt Opinion; and by the Serjeants, Procedendo ſhall be awarded quod non negatur, and it ſeems that the Common Law is, that a *Man ſhall not have Debt*,

Detinue, Covenant nor ſuch like in Banco, unleſs it be of 40 *s. or more.* Br. Juriſdiction, pl. 45. cites 14 H. 8. 15.

7. Note that Hill 4 Mar. 1. it appears by ſearching the Records of C. B. that the *Juſtices of the Bank may take and Record a Recognizance as well out of Term as in Term, and as well in an any County in England as at Weſtminſter.* And in the Time of H. 5. Ann. 4. a Recognizance was taken at Rippon in the County of York, 28 September, Anno 4 H. 5. which is out of Term. And ſeveral ſuch Records are in C.B. as well out of Term as in Term, and out of Court in the Time of H. 4. H. 5. H 6. and almoſt in all other Reigns; quod Nota, and See the Entries of the three following, viz. M. 4. H 5. Rot. 119. and H. 13. H.6. Rot. 320. and P. 27 H. 6. Rot. 125. Br. Recogninane. pl. 20.

8. It is manifeſt that *this Court began not after the making of this Act*, as ſome have thought; for in the next Chapter, and divers others of this very great Charter, mention is made De Juſticiariis noſtris de Banco, which all Men know to be the Juſtices of the Court of Common Pleas commonly called the Common Bench or the Bench, and Doct. & Stud. ſaith that is a Court created by Cuſtom. 2 Inſt. 22. 23.

9. It appears by our Books, that the Court of Common Pleas *was in the Reign of H.* 1. that there was a Court of Common Pleas in Anno 1. H. 3. which was before this Act, Martinus de Patteſhull was by Letters Patents conſtituted Chief Juſtice of the Court of C. B in the firſt Year of H. 3. 2 Inſt. 23.

10. It was reſolved by all the Judges in the Exchequer Chamber, that all the Courts viz. *B. R. C. B. the Exchequer and the Chancery*, are the King's Courts, and have been *time out of Memory*, ſo that a Man cannot know which is the moſt Ancient. 2 Inſt. 23.

11. A *Defendant* having *made an Affidavit in C. B. afterwards* being ſummon'd *confeſs'd it to be falſe*, whereupon the *Court recorded his Confeſſion* and ordered him into Cuſtody, and to ſtand in the Pillory for Perjury; And notwithſtanding what was urged by his Counſel, as to the Juriſdiction of C. B. he was put in the Pillory the laſt Day of the Term. 8 Mod. 179. Trin. 9 Geo. 1. The King v. Thorowgood.

12. *This Court's Authority is founded on Original Writs iſſuing out of Chancery*, which are the King's Mandates, for them to proceed to determine ſuch and ſuch Cauſes; For it was *a Maxim among the Normans, that there ſhould be no Proceedings in C. B. without the King's Writ*; and therefore a Writ always iſſued to warrant this Court's Proceedings, and thoſe iſſued out of Chancery, becauſe when the Courts were but one, the Chancellor had the Seal; Therefore when they were divided he ſealed all Original Writs by this Method, and the Seal was a Check on the other Courts to know what Cauſe was there, and likewiſe that the Fines for having Juſtice in the King's Court ſhould be anſwer'd in Court, before there were any Proceedings and therefore Fleta ſays Dum tamen warrantum * per Breve Regis habuerint Cognoſcendi, nam ſine Warranto Juriſdictionem non habent neque Coertionem. Gilb. Hiſt. of C. B. 2.

* This is miſprinted in Gilb. and ſhould be as here. See Selden's Fleta 85. Lib. 2. cap. 34.

For more of the Court of Common Pleas, See Crompt. Juriſdiction of Courts, 91. to 102. Inſt. 99. to 103. cap. 10.

(N. 3) Pleadings. As to Matters done in B. R. or C. B. or other Courts.

1. B. R. *and Chancery are Courts removeable, and therefore it ought to be pleaded where they are held.* Arg. Mo. 176. pl. 310. and vouch'd 27 H. 6. 10. b. where in Writ of Maintenance in B. R. he did not ſhew where the Bench was, and therefore ill; For the Writs out of this Bench are &c. Ubicunque fuerimus in Anglia; And in 5 E. 4. 3. b. the laſt Caſe of the Year the Diverſity is taken between the C. B. and B. R. on a Bill exibited in C. B. which did not ſhew where the Bench was, and yet awarded good; For the Statute of Magna Charta is that it ſhall be held in certo loco; And for this Point he vouch'd 34 H. 6. and 36 H. 6.

2. In *Trover* the *Defendant ſaid that he recover'd againſt the Plaintiff, a Debt of 20l. in B. R. and had a Fi. fa. to the Sheriff of Y. who at W. in the County of Y. ſeiſed the Goods and deliver'd them to him in Satisfaction* of his Execution. But it was ruled to be ill becauſe he *did not ſhew where B. R. was at the time of the Recovery*, it being a Court removeable as 5 E. 4 8. is. Cro. E. 504. pl. 28. Mich. 38 & 39 Eliz. B. R. Thompſon v. Clerke. Noy. 56. S. C. adjudged.

(O) Court of *Exchequer*.

1. ROTULO Parliamenti, * 2 H. 4. Numero 112. the Commons Petition againſt Writs, called Quia datum eſt nobis intelligi, iſſuing out of the Exchequer, without any Inqueſt found or other Record, but no Aſſent thereto, vide ſuch Petition againſt this Writ † 4 H. 4. Numero 78. Simile, ‡ 3 H. 5. Numero 46.

* Prynne Abr. of Cotton's Record. 413. 2 H 4. No. 99. the ſame Petition, to which the Anſwer was, "The accuſtom'd Uſe ſhall continue." But there are not ſo many Numbers as 112. † Ibid. 422. No. 78. ‡ Ibid. 548. No. 46.

2. *The Court* of Exchequer, which as Gervaſius Tilburienſis de Neceſs. Scac. Obſ. (a ſure Author) reports, *was here from the very Conqueſt, and inſtituted according to the Pattern of that in Normandy, and was erected there by Rollo*, as Reviſe ſaith, Notes on Grand Cuſt. fol. 8. The Authority of this Court was ſo great, that no Man might contradict a Sentence pronounced here, and not only the Law and the *affairs concerning all the great Baronies of England, and all ſuch Eſtates as held in Capite were tranſacted there*, but many Laws and Rights were diſcuſs'd, and many Doubts determin'd, which frequently aroſe from incident Queſtions; For the excellent Knowledge of the Exchequer conſiſts not in Accounts only, but in multiplicity of Judgments. And *Common-Pleas were uſually held in this Court untill the* 28. *of Ed. the 1ſt.* it was Enacted, that no Common-Plea ſhould be henceforth held in the Exchequer, contrary to the form of the Great Charter. *In this Court ſate the Capital Juſticiary*, the *Chancellor, Treaſurer, and as many of the moſt diſcreet, greateſt and knowing Men, (real Barons) whether of the Clergy or Laity as the King pleas'd to direct.* The Buſineſs of the

See Prynn's Animadverſions 52. 53.

the Court was not only Accounts and what belong'd to them, but to decree right, determine doubtful Matters, which arose upon incident Questions, to hold Common Pleas as before, and to Judge what chiefly concern'd all Capite Lands, and the great Baronies of England. Brady's Preface to the Norman History. 160, 161.

3. *Information upon the Statute of* 8 *E.* 4. *cap.* 2. *for giving Licences*; The Question was, if the Action lies in the Exchequer? The Barons said this is a superior Court though not nam'd in the Statute, and that the Suit may be here, for there are no restrictive Words in the Statute, and this Court hath Power to hold Plea of any Thing which doth concern the Queen, if not restrain'd; Adjornatur. Cro. E. 326. pl. 3. Pasch 36. Eliz. B. R. Agard v. Candish.

Sid 346 pl. 12 Mich. 19 Car. 2. B R The King v. Patrick, the Court seem'd that

4. On a *Mandamus to restore* Dr. Patrick *to the Mastership of Queen's College in Cambridge the Court were divided*, whereupon it was considered *whether it being a Cause of the Crown Side it might be adjourn'd into the Exchequer Chamber*, and it seem'd to some that it might, but it was not. Lev. 65. Pasch 14 Car. 2. B. R. Queen's College Case, alias Dr. Patrick's Case.

it might and that Pleas of the Crown as well as other Pleas might be remov'd thither. And the Book of 4 Inst. 68, 69 seems to warrant it; And that it *extends to all Pleas but those in the Ecclesiastical Court.*——Ravm. 101 to 113. S C. but S. P. does not appear——2 Keb. 259 pl. 5. S. C. says that upon Motion to adjourn it into the Exchequer Chamber, because the Court were divided, the Court granted it.

5. In the Exchequer there are these 7 *Courts.* 1st. The Court *of Pleas.*

2dly. The Courts of *Accounts.*

3dly. The Court of *Receipt.*

4thly. * The Court of the *Exchequer Chamber, being the Assembly of all Judges of England for Matters in Law.*

* Excepting in 2 Cases, no Case in Law, can be shew'd to be adjourn'd into the Exchequer Chamber, before Argument by the Judges, in the same Court, where the Cause is hanging, and these 2 were The Case of the Postnati, Calvins Case, 7 Rep. fol. 1. and the Case of Suttons Hospital. 10. Rep. fol. 23. and no others before Argument here, and difference in Opinion by the Judges, or Agreement by the Judges upon their differing in Opinion, to adjourn the same thither, or by Writ of Error; PerCoke Ch. J. who said these Rules are to be observ'd, for the adjourment of Cases of Difficulty into the Exchequer Chamber, 1. This *ought to proceed ex motione curiæ*, but not of the Party concern'd. 2 This *ought to be after Argument*, but not before and upon difference in their Opinions, or by Writ of Error. 3. When the Case is adjourn'd thither, if a Judge dies, the matter, for this, is not to stay, but to proceed; And if one of the Judges have there argued, and afterwards one of the other Judges dies, the Matter is not to stay, till another Judge be made, but the same is to proceed, and a *new Judge being made he is not then to argue.* 2 Bulst. 146, 147. Mich. 11 Jac. in Case of Warraine v. Smith.

5thly. The Court of *Exchequer Chamber for Errors in the Court of Exchequer.* 31 E. 3. cap. 8. and 31 Eliz. cap. 1.

6thly. A Court in the *Exchequer Chamber for Errors in the King's Bench.* 27. Eliz. cap. 8. 31 Eliz. cap 1. Co. pl. Intr. fo. 2. 24. 37.

And 7thly. This *Court of Equity in the Exchequer Chamber.* 4 Inst. 119.

6. King Charles the 2d. having taken up Sums of Money of the Petitioners, (Bankers) granted to them and their Heirs, Servant *Annuities chargeable upon the Hereditary Revenue, of Excise* given to the King by 12 Car. 2. cap. 24. The Barons held, that the Remedy by Petition to the Barons was a proper Remedy, and Judgment was given for the Petitioners by the Opinion of 3. but Letchmere B. held that the King could not alien or charge this Revenue, and that for several Reasons there mentioned. Freem. Rep. 331. pl. 413. Hill. 1691. in Scacc. upon the Petition of Hornbee & al'.

[(P) *Court of Exchequer.*]
What Perſons ſhall *have the Privilege* of Suit.

1. THE King's Farmer may ſue one that detains from him Part of the Poſſeſſions **that he hath from the King,** out of which the Farm is to be paid, **by which he cannot pay his Farm to the King.** 38 Aſſ. 20. **adjudged.**

Br. Quo Minus, pl. 4. cites S. C. —— Br. Juriſdiction, pl. 70. cites S. C. —— Ibid. pl. 90 cites S.C.

2. Thomas Younge *Juſtice ſued Bill in the Exchequer againſt the Clerk of the Hanaper upon his Account*, and the *Defendant* caſt Superſedeas of the Privilege of the Chancery, becauſe he was *Clerk of the Chancery*; and by all the Juſtices in the Exchequer Chamber the Superſedeas ſhall not be allowed; for every one who is *Accountant ought to be attendant* and preſent, and there he ſhall be ſued, for it is an Advantage to the King that he ſhall attend, and ſhall Account; and Accountant may have Bill againſt his Debtor, and this is for the King's Advantage, Quod citius ſolvat Regi; *and if* Accountant be *ſued in C. B.* they ſhall ſend Superſedeas to ſurceaſe; *and if he* be *ſued in B. R.* thoſe of the Exchequer ſhall ſhew the * Record that he is Accountant &c. and *ſhall not have Superſedeas to the King*; for the Pleas there are Coram Rege &c. and he ſhall be diſmiſſed, and ſhall be ſued in the Exchequer. Br. Privilege, pl. 25. cites 9 E. 4. 53.

S. C. cited 2 Brownl. 26 in Caſe of Guy v. Reynell. * An *Accountant* in the Exchequer to the King was ſued in B. R. and a *Baron* of the Exchequer *came into the Court, and produced his Book of Accountants* to the King, and that the Defendant was one, *and prayed the Privilege* of the Court of Exchequer, and that the Suit might be ſtayed. The Court demanded of the Secondary, what the Courſe was in ſuch Caſe, whether to grant it upon ſuch bare Averment of the Baron, or that it ought to be pleaded and prayed by the Party? Upon his informing the Court that it had been uſually allowed *without Plea or Prayer*, it was granted accordingly. But Williams J. was ſtrongly againſt it, and ſaid, that there are many Books wherein it was adjudged in Point, that it ought to be upon the Party's Plea and Prayer; and that without this the Court cannot certainly know whether he be the ſame Party for whom the Privilege is prayed. 2 Bulſt. 36. Mich. 10 Jac. Anon.

3. If an *Accountant in the Exchequer* be *impleaded in C. B.* the Exchequer may ſend a Superſedeas to them to ſurceaſe. Br. Superſedeas, pl. 38. cites 9 E. 4. 57.

And if he be impleaded *in B. R.* thoſe of the Exchequer *will ſhew the Record of Account* &c. For they cannot make Superſedeas to the King; for there the Pleas are held coram Rege, and not coram Juſticiariis; and he ſhall be diſmiſſed. Ibid.

One who was *Receiver General of the Revenues* of the Crown in the Counties of W. and L. &c. being ſued in C. B. brought a Writ of Privilege out of the Exchequer, but it was not allowed. D. 328 pl. 9. Mich. 15 & 16 Eliz. Hunt's Caſe.

4. By the Statute of *Articuli ſuper Chartas cap.* 4. it is provided, That *no Common Plea ſhall be held in the Exchequer, unleſs where either the Plaintiff or the Defendant is privileged.* 5 Rep. 62. a. Mich. 32 & 33 Eliz. in the Exchequer, in Sparrie's Caſe.

The Privilege of ſuing by *Quo Minus* in the Exchequer *extends to the Debtor of the King's Debtor.* 4 Inſt 112. cap. 11.

5. The Plaintiff being an Accountant in the Court of Exchequer, by Bill there prayed to be relieved againſt a Bond put in Suit by Defendant in the Petty-Bag, by reaſon of his Privilege as Uſher of the Chancery. The Defendant pleaded his Privilege as an Officer of the

Court of Chancery. The Court agreed, that when *both Parties* are *privileged*, *his Privilege ſhall take Place who ſues firſt*; and that in this Caſe the Suit in Equity to be relieved againſt the Penalty of the Bond is firſt attach'd here, and it is not the ſame Suit with that at Common Law, but diſtinct from it. And it was further ſaid, that *if* both Parties are privileged Perſons, and *the Attendance of the one is more requiſite than of the other*, (as in the principal Caſe it is, the Plaintiff here being an Accountant in this Court, and entred into his Account, as by his Bill is alleged, which cannot be compleated by Deputy or Attorney) in ſuch Caſe *his Privilege ſhall be allowed who has moſt Cauſe* of Privilege; & adjornatur. But at another Day the Plea was over-ruled, and an Injunction granted till Anſwer. Hard. 117. pl. 2. Trin. 1658. Baker v. Lenthall.

6. The Plaintiff, as Debtor to the King, and *Treaſurer of the Navy*, *exhibited his Bill in the Exchequer*. The Defendant *pleaded* his Privilege, as *one of the ſix Clerks in Chancery*, under the Great Seal. Hale Ch. B. and the Court held, that a general Privilege, as Debtor, will not hold againſt a ſpecial Privilege, but againſt a general Privilege it will. But a Privilege as Accountant will hold againſt a ſpecial Privilege in another Court, as Officer of the Court, or otherwiſe, though it be not alleged that he has enter'd upon his Account; and in this Caſe the Plaintiff, being Treaſurer to the Navy, is Eo ipſo an Accountant. Hard. 316. Mich. 14 Car. 2. in the Exchequer, Sir Geo. Carteret v. Sir John Maſſam.

7. There are *three Sorts of Privileges in the Exchequer*, 1ſt. As *Debtor*. 2dly, As *Accountant*. 3dly, As *Officer* of the Court. Againſt the firſt of theſe, any Man who hath a ſpecial Privilege in another Court, as an Officer of the Court, or an Attorney, ſhall have his Privilege, becauſe the Privilege of a Man as Debtor is only a general Privilege; But if an Accountant begin his Suit here, no Privilege ſhall be allowed elſewhere, becauſe he has a ſpecial Privilege, by reaſon of his Attendance, to paſs his Account, in which the King hath a particular Concern; the ſame holds in an Officer of the Court; if he commences a Suit here, no Privilege in another Court ſhall prevail againſt him, becauſe his Attendance here is requiſite, and his Privilege here is attach'd firſt by commencing his Suit; But where the Accountant has finiſhed his Account, and reduced it to a Certainty, ſo that it is become a Debt, then he hath only a Privilege as a general Debtor has; So a *Servant to an Officer*, *or Miniſter of the Court*, has no Privilege againſt a privileged Perſon elſewhere; Per Cur. Hard. 365. Paſch. 16 Car. 2. in the Exchequer, Clapham v. Sir J. Lenthall.

(Q) [*Court of Exchequer.*]
Of what *Things* they ſhall have the *Privilege of Suit*.

Br. Juriſdiction, pl. 70. and Ibid. pl. 90. cites S. C. — Br Quo Minus, pl 4 cites S. C.

1. **If the King's Farmer ſues in the Exchequer againſt a Perſon** for detaining of Tithes, Parcel of the Poſſeſſions to him leaſed in Farm by the King, **though the** Right of Tithes comes in Debate **between them, yet the Court ſhall not be ouſted of Juriſdiction.** 38 Aſſ. 20. **adjudged.** * **By Reports ſaid Quod Mirum.**

—— Br. Prerogative, pl. 74. cites S. C. but ſays it is ſaid there, [viz in the Year-Book,] Quod Mirum!

* This ſeems to intend his Book of the Book of Aſſiſes, where are the Words of Quod Mirum.

2. If

2. If J. S. be Parſon impropriate of D. and B. Vicar there, and the King Patron of the Vicarage, and there is a Debate between the Parſon and Vicar for Tithes, the Suit in theſe Tithes ought to be in the Exchequer. Hill. 8 Ja. Scaccario, per Curiam. Sav. 100. Anon. but S. C. accordingly. And per Cur. it may be commenced accordingly by Engliſh Bill there, or by Action in the Office of Pleas; for it is apparent tha the King is ſupreme Ordinary. This was Paſch. 9 Jac.

3. 10 E. 1. Rotulo Clauſarum Membrana 2 in Dorſo Breve Theſaurario & Baronibus Scaccarii, quod non teneant Communia Placita, niſi tangant Regem, vel Miniſtros Scaccarii, Statutum novum de Scaccario aliter dictum Statutum de Roteland' in Magna Charta, 2 Part, Fol. 66. niſi ſpecialiter contingat nos vel Miniſtros noſtros.

4. 13 Ed. 1. Rotulo Clauſarum Membrana 7. de debitis Regis in Scaccario atterminandis.

5. Among the Ordinances of the 5 E. 2. 22 there is ſuch Ordinance, that no Plea be in the Exchequer but ſuch as touch the King, and his Miniſters of the ſaid Place, and their Servants, who for the moſt Part inhabit with them in the Place where the Exchequer is held, and if any other be ſuffer'd to ſue them, let the Impleaded be aided by Parliament. Fol. 539.

6. If a Copyholder of the King's Manor be ſued in the Eccleſiaſtical Court for Tithes, upon a Suggeſtion in Scaccario, that he preſcribes to pay a certain Modus Decimandi, he ſhall have a Prohibition there, and this Modus ſhall be tried there. Trin. 7 Ja. Scaccario, adjudged. Lane 39. Anon. S. C.

7. If a Man be amerced in the King's Leet, and upon Proceſs out of the Exchequer the Bailiff diſtrains him for the Amercement, and he brings Treſpaſs, he ought to bring this Action of Treſpaſs in the Office of Pleas of the Exchequer, for the Bailiff levied it as an Officer of this Court. Paſch. 8 Jac. in Camera Scaccarii, per Curiam. Lane 55. Trin. 7 Jac. in the Exchequer, Anon. S. P. and ſeems to be S. C.

8. If an erroneous Judgment be given in a Formedon in a Copyhold Court in the Country where the King is Lord, the Party againſt whom the Judgment is given may ſue by Bill or Petition to the King in the Exchequer Chamber, in the Nature of a Writ of Falſe Judgment, for the Reverſal of this Judgment; for as in the Court of a common Perſon the proper Suit for Reverſal thereof is to the Lord by Petition, ſo it is here to the King, and the Exchequer Chamber is the more proper to ſue to the King by Petition than the Chancery, becauſe it concerns the King's Manor. Hill. 8 Jac. Scaccario, *Edwards's Caſe.* Lane 98. S. C. accordingly.

9. An Action of falſe Impriſonment or other Action, may be brought againſt the Under-Sheriff in the Exchequer, though the Sheriff be the Officer of the Court, for the Court takes Notice of the Under-Sheriff alſo. Hill. 7 Jac. Scaccario, between *Doyley and Jollife*, adjudged per Curiam, and ſaid that is the common Courſe of the Court. Lane 48. and 52, 53. S. C. Tanfield Ch. B. held that the Plaintiff ſhould not have Judgment, for that the Sheriff is no ſuch Perſon as ought to be privileg'd here, and therefore the Plaintiff ſhould have his Remedy elſewhere, and he ſaid, that ſuch a Caſe had been revers'd in the Exchequer Chamber; For the Under Sheriff is but an Attorney for a Party privileged, that is, for the Sheriff; But all the Clerks of the Court and the other Barons were againſt him in that, and alſo all the Preſidents. ——— 2 Bulſt 80. B. R. S C. but S. P does not appear ——— Brownl. 226. S. C. but S. P. does not appear. ——— Cro. J. 323. pl. 1. Trin. 11 Jac. B. R. S. C. but S. P. does not appear.

10. *Statute of Rutland* 10 E. 1. touching Recovery of the King's Debts, wills and ordains that *no Plea ſhall be holden or pleaded in the Exchequer, except it does ſpecially concern us and our Miniſters of the Exchequer.* Whether this be an Act of Parliament or only an Ordinance by the King for the better ordering this Court has been very much doubted. See Pl. C. 208 b 209 a 4 Inſt.

4 Inſt. 112. cap. 11. where it is ſaid to be an Ordinance only. But 2 Inſt. 551. upon that Statute of Articuli ſuper Chartas 28 E. 1. cap. 4. Lord Coke ſays, that this was a Statute the Title and Stile of the Act is Statum Novum de Scaccario, aliter dictum, Statutum de Roteland. In Libro rubeo it is call'd Statutum de Roteland, and there is a Writ in the Regiſter under the Title of Brevia de Statut', Rex Theſaurario, & Baronibus Salutem, cum ſecundum Legem & Conſuetudinem Regni noſtri Communia Placita coram vobis ad Saccarium prædictum placitari non debent niſi Placita illa nos vel aliquem Miniſtrorum noſtrorum ejuſdem Scaccarii ſpecialiter tangunt &c. which Writ reciteth the Words of the Statute of Roteland, and in the Margent of the Writ is quoted Statutum de Roteland, ſo as without Queſtion this Act was made by Authority of Parliament and alſo whatſoever Pleas were holden in the Exchequer, in the Reign of H. 2 when Glanvile wrote, yet now by two Acts of Parliament their Juriſdiction is limited and ſettled; and therefore reject a late Opinion contrary to ſuch Authority, and never read nor heard of before. 2 Inſt. 551.——But Prynn's Animadverſions 55, 56, 57 gives many Reaſons to prove that the Statute ſtil'd the Statute of Rutland is no Statute.

Yet in three Caſes the Court of Exchequer has Juriſdiction of common Pleas between common Perſons in perſonal Actions only.

11. *Articuli ſuper Chartas cap.* 4. made 28 *E.* 1. enacts that *no common Plea be henceforth held in the Exchequer againſt the Form of the great Charter.*

Where an *Officer* or Miniſter *is one of the Parties in any perſonal Action*, becauſe that his Abſence in other Courts may hinder the Affairs of the King in his Court of Exchequer. Any Man that is a *Priſoner of this Court, or an Accountant that is entred into his Account*, or any other that ought to have the like Privilege of this Court of Exchequer, ſhall not be ſued in any perſonal Action but in this Court; and the Reaſon it, becauſe neither of theſe Acts of Parliament take away the Privilege of any Court; for then, if the Party privileged were ſued in any other Court, he ſhould not, in reſpect of his Privilege of the Exchequer, anſwer there; and therefore leſt the Party ſhould be without Remedy, he may commence his Action perſonal againſt him in the Exchequer; for Statutes muſt be ſo expounded, as that there be no Failure of Juſtice. He that is *a Farmer, or indebted to the King*, for the Kings more ſpeedy Satisfaction of his Debt or Duty, ſhall ſue his Debtor by a Quo Minus in the Exchequer, and this appeareth by Britton, who treating of the Juriſdiction of the Exchequer ſaith, Et que il eyt Power a Conuſter de dett, que l'un doit a nous detters per ou nous puiſſons pluis toſt approcher a noſtre. 2 Inſt. 551.

12. *After the Death of any Debtor of the King Proceſs ſhall iſſue out againſt the Executors the Heir and Tertenants all together* at one Time by the Courſe of the Exchequer. Savil. 52, 53. per Fanſhaw Remembrancer in pl. 111. Paſch. 25 Eliz. Anon.

13. There ſhall be *no Suit* or Proceedings according to the Order of the Exchequer Chamber in Caſes of Conſcience *upon any Penal Statute.* 3 Le. 204. pl. 259. Trin. 30 Eliz. in the Exchequer. Anon.

14. *J. S. holds Lands of the King by Fealty and yearly Rent, and makes a Leaſe thereof to A. B. pretends that J. S leaſed the ſame to him* by a former Leaſe; Albeit there is a Rent iſſuing out of theſe Lands to the King, yet *neither A. nor B. can ſue in this Court by any Privilege in reſpect of the Rent*, for that the King can have no Prejudice or Benefit thereby; for whether A. or B. doth prevail, yet muſt the Rent be paid; and if this were a good Cauſe of Privilege, all the Lands in England holden of the King by Rent &c. might be brought into this Court. 4 Inſt. 118. cap. 13.

15. *But if Black Acre be extended to the King for Debt of A. as the Land of A.* and the *King leaſeth the ſame to B. for Years, reſerving a Rent*; *C. pretends that A. had nothing in the Land, but that he was ſeis'd thereof* &c. this Caſe is within the Privilege of this Court, for if C. prevail the King loſeth his Rent. 4 Inſt. 118, 119. cap. 13.

16. The *King makes a Leaſe to A. of Black Acre* for Years *reſerving a Rent*, and *A. is poſſeſs'd of a Term for Years in White Acre*, the *King may diſtrain in White Acre for his Rent, yet A. hath no Privilege for White Acre*, to bring it within the Juriſdiction of this Court. 4 Inſt. 119. cap. 13.

17. Upon a *croſs Bill againſt a Parſon to diſcover what Sort of Tythes in particular he claims* to be due to him; for that the Parſon in his Bill one while demanded one Manner of Tything, and another while another, the Court held that *in ſuch a croſs Bill the Plaintiff need not entitle them-*

themſelves to the Juriſdiction of the Court, becauſe the Croſs Bill is grounded upon another Bill here in Court. Hard. 160. Trin. 1659. pl. 2. in the Exchequer. Doble v. Portman.

18. If *a Man* be *ſued here in the Office of Pleas*, he *may have an Engliſh Bill to be reliev'd againſt the Plaintiff without ſetting forth Matter of Juriſdiction*. Hard. 160. Trin. 1659. pl. 2. in Scacc. Doble v. Portman.

19. *Whatever belongs to the Juriſdiction of the Dutchy-Court* may well be determined in the Court of Exchequer, notwithſtanding that the Dutchy-Court is in being; Per Cur. Hard. 171. Trin. 12 Car. 2. in Scacc. Fleetwood v. Pool.

20. *H. was outlaw'd* at the Suit of B. and *Lands in his Poſſeſſion were extended, C. a third Perſon, claim'd a Title to thoſe Lands, and brought an Action of* Treſpaſs and *Ejectment* for them, and pleaded to the Inquiſition; It was order'd that the Plea to the Inquiſition ſhould be try'd firſt, and that the Ejectment ſhould be brought *in this Court, becauſe the King's Revenue was concern'd*. Hard. 176. pl. 2. Hill. 12 & 13 Car. 2. Hammond's Caſe.

21. Upon an *Ejectment* brought in C. B. by the Defendant here, the Plaintiff mov'd that the Action might be laid here, becauſe his *Title was under an Extent out of this Court, for Debts in Aid*. The Court order'd the Parties to proſecute their Suit here, becauſe this could not appear but upon Examination of the whole Matter. Hard. 193. pl. 2. Trin. 13 Car. 2. in Scacc. Banks v. Bennet & al'.

22. The *Commiſſioners of Exciſe fined* the Plaintiff, being *a Brewer, according to the new Act in* 20 *l. for not paying the Duty of Exciſe*; And *upon a Return made that he had no Goods, whereof a Diſtreſs could be taken they impriſoned him*; whereupon he brought an Action of falſe Impriſonment in the Court of B. R. and the Defendants prayed the Action might be laid here, becauſe the Cauſe concerns the King's Revenue. Sed non Allocatur per Curiam, becauſe *this Fine does not immediately concern the Revenue of Exciſe*, but is a Penalty impoſed for an Offence committed in it; And it belongs no more to this Court than other like Caſes ariſing from Fines and Impriſonments; otherwiſe, if it had immediately concerned the King's Revenue. Hard. 193. pl. 1. Trin. 13 Car. 2. in Scacc. Biſhop v. Warner.

23. Court of Exchequer is a private Court; *its proper Juriſdiction concerns only the King's Revenue and the King's Officers*. Per North. K. Vern. R. 221. Hill. 1683. E. of Newburgh v. Wren. Pl. C 208. per Sanders Ch. B. Stradling v. Morgan.

24. No *Errors in Fact* are examinable in the Exchequer Chamber. Per Holt Ch. J. Show. 171. Trin. 2 W. & M.

(Q. 2.) Diſputes between the Courts of Exchequer and other Courts.

1. JUriſdicton of the Exchequer rejected for that *one of the Defendants had no Priviledge there*. Cary's Rep. 96. cites 20 Eliz. Eaſt v. Bittenſon.

2. The Plaintiff ſued in Chancery, to be reliev'd for a Leaſe of 1000 Years of certain Lands, and *depending the ſuit in Chancery, the Defendant, by Quo minus* out of the Exchequer, being Tenant of the other Lands to the Queen, *brought an Ejectment* againſt the under Tenants of the Plaintiff; therefore an *Injunction* to ſtay the ſuit of Quo minus, if

Cauſe be not ſhew'd. Carey's Rep. 161. cites 21. Eliz. Jones v. Whitney.

S P. Toth. 216. cites 28 Eliz. Cutts v Peters.

3. No Exchequer Man has Privilege againſt a *Subpæna*. Toth. 216. cites 3 Car. Tuke v Clerk.

An Injunction out of the Exchequer diſallowed and the Party which procured it, ſent for by a Purſuivant, becauſe her Majeſty's Revenue was not in queſtion here. Toth 217. cites Hartoppv. Hartopp in 1594.

4. An *Officer of the Cuſtom Houſe being ſerved with a Subpæna* to anſwer a Bill, he refuſed and *procured an Injuction out of the Exchequer* to ſtay the Suit; But it was ordered that the Plaintiff ſhould and might proceed in the Suit, notwithſtanding ſuch Injunction, and the Party was committed for ſerving the ſame, the Court taking it to be a great Derogation to their Authority. N. Ch. R. 19. 8 Car. in Caſe of Vendall & al.' v. Harvey, cites it as an Order read by Order of the Court as made Lord C. Elleſmere.

5. A Cauſe had been heard in the Exchequer where 2 *ſeveral Trials* had been directed, viz. Will or no Will, and a *Verdict was for the Plaintiff in both*; And yet the Chief Baron *diſmiſſed the Bill there but without Prejudice in Law or Equity*. It was argued that thoſe Words (without Prejudice in Law or Equity) muſt be underſtood not to hinder the Plaintiff from ſeeking Relief in any other Court of Law or Equity. And the Court conceived accordingly and order'd that Plaintiff who had brought an *Original Bill in Chancery for the ſame Matters*, and to examine Witneſſes in order thereto in Perpetuam rei Memoriam, might *examine any Witneſſes not examined in the Exchequer, and* as to Matters examined unto there, he might examine *the ſame Witneſſes De bene eſſe*, and how far thoſe De bene eſſe ſhould be uſed the Court would conſider. Chan. Caſes 155. Hill. 21 & 22 Car. 2. Anon.

6. A *Bill was exhibited in Chancery, concerning Tithes and Bounds of a Pariſh, which proceeded to* Anſwer and *Replication*. Then *he exhibited another Bill in the Exchequer*, and there *Witneſſes were examined* and now *proceeds again in Chancery, and replies*. The *Defendant pleaded the Proceedings* and Examination *in the Exchequer*, and ruled good as to Examination of the ſame Matters, which, being examined to there, were not examined in Chancery. Chan. Caſes 233. Trin. 26 Car. 2. The King v. Brownlow.

And Lord Keeper North ſaid, that there are ſeveral Precedents of Injunctions from Chancery to the Exchequer, where it has not kept within its proper Bounds, ſo that the Juriſdictions have by that means claſhed. Ibid 221. in S. C.

7. Mortgagor exhibits a *Bill to redeem in the Exchequer*; the Defendant there ſhall be at Liberty to exhibit a *Bill to Foreclоſe in Chancery*, and the *pendency of a former Suit* is no Plea, though it was inſiſted that this was only in Nature of a Croſs Bill to that in the Exchequer, which the now Plaintiff might have exhibited there, and then one account of the Profits would have ſerved all, and it was Vexatious in the Plaintiff to bring the ſame matter in Iſſue in another Court at the ſame time; And if the Deputy Remembrancer in the Exchequer ſhould take the Account one way, and a Maſter here ſhould take it another, it would breed Confuſion, and if this Court ſhould be of an Opinion, that there ought to be no Redemption, and the Exchequer ſhould Decree a Redemption, the Juriſdictions would claſh; And therefore, to avoid theſe Inconveniences, Priority of Suit ought to give Juriſdiction to the Exchequer. Lord Keeper declared his Opinion to be, that in any Caſe if the Mortgagor exhibited a Bill to redeem in the Exchequer, that the Defendant there ſhould be at Liberty to exhibit a Bill to Foreclоſe in in this Court; and over-ruled the Plea, and ordered the Defendant to pay Coſts. Vern. 220. pl. 219. Hill 1683. Earl of Newburg v. Wren.

8. *Aſſignees under a Commiſſion of Bankruptcy bring a Bill for an Account againſt ſome Perſons who had ſeiſed the Bankrupt's Eſtate by Virtue of* 3 *Extents, one for the King, and the other two were extents in Aid*; Bill diſmiſſed

diſmiſſed, the matter being properly Cogniſable in the Court of Exchequer, which is the King's Court of Revenue. 2 Vern. 426. pl. 387. Paſch. 1701. Brown and Sandys v. Trant and Bridges & al.'

9. Court of *Chancery will not examine the Quantum of the King's Debt, nor how far Extents ſued out are neceſſary.* 2 Vern. 426. pl. 387. Paſch. 1701. on Caſe of Brown and Sandys v. Trant and Bridges & al'.

(Q. 3) Pleadings of Privilege of the Court of Exchequer.

1. A Suit in Chancery was againſt ſeveral Defendants, *one of the Defendants died, the Survivors pleaded the Privilege of the Exchequer.* But becauſe this Suit was Joint at firſt againſt the Deceas'd and others, and any Thing appearing he had no privilege in the Exchequer, ſo that the Court of Chancery being lawfully poſſeſs'd of the Plea, his Death ought not to give any more Privilege to the other Defendants to draw the Cauſe from this Court than they ſhould have had at they beginning, or while he liv'd ; And therefore his Lordſhip did adjudge the Defendant's Bill in this Court. 1 Chan. R. 69, 70. 9 Car. 1. Lake v. Philips.

For more of the Court of Exchequer, See Crompt. Juriſdictions of Courts, 105. to 112.——4 Inſt. 103. to 117. Cap. 11.——Prynn's Animodverſions on 4 Inſt. 52. to 59.

(R) Courts. *Dutchy.*

1. If Lands, Parcel of the Dutchy, lie within the County-Palatine, a ſuit in Equity for this may be in the Dutchy-Court. Mich. 13 Jac. B. *Holt's* Caſe, per Warburton, to be the Common Practice in this Time. Hob. 77. pl. 101. Owen v. Holt S C. but S. P. does not appear.

2. But otherwiſe it is for Lands held of the Dutchy lying out of the County-Palatine. Mich. 13 Jac. B. *Holt's* Caſe, per Warburton, to be common Practice ; for the Juriſdiction is local. Hob. 77. pl. 101. Owen v. Holt, S C. but S. P. does not appear.

3. If a Man enters into an Obligation concerning Lands lying in the County-Palatine, and he is ſued upon this at Common Law, he cannot ſue in Equity in the Dutchy-Court, to be relieved againſt this Bond; for the Juriſdiction being local, it cannot be extended to this Collateral Matter. Mich. 13 Jac. B. *Holt's* Caſe, per Curiam. Hob. 77. pl. 101. Owen v. Holt S. C. & S P. a Prohibition was awarded becauſe the Dutchy Court has no Juriſdiction in reſpect of the Perſon, as becauſe the Perſons, who are ſuitors, dwell within the County Palatine of Lancaſter, nor upon the Land of the Subject any where, but upon the King's own Lands and his own Revenue, and perhaps for Bonds and Aſſurances given for his Revenue of the Dutchy ; Whereupon the Plaintiff, finding the Opinion of the Court, ſaid he would ſurceaſe his Suit there without Writ ; And ſo the Court compounded the Cauſe. —— S.C cited 2 Lev. 24.

4. In

4. In Regard of the *Land* of the Dutchy of Lancaſter, the *King is but as a Common Perſon.* 2 Roll. 398. Rege Inconſulto (C) pl. 4. cites 11 H. 4. 85. b.

Chancery may hold Plea of Lands within the Dutchy;

5. The Defendants inform, that the Bill is exhibited for certain *Lands, Parcel of the Dutchy* of Lancaſter, and therefore ordered, that for ſo much it ſhall be diſmiſſed. Cary's Rep. 139. cites 22 Eliz. Price v. Lloyd, Owen and Read.

Per Ld. Chancellor. Chan. Caſes 272. Hill. 27 & 28 Car. 2. Brown v. Vermuden. —— Hard. 171. Trin. 12 Car. 2 Fleetwood v. Pool, it was held by the Court in the *Exchequer*, that whatever belongs to the Juriſdiction of the Dutchy may well be determined in the Exchequer.

6. The Dutchy Court has *no Juriſdiction in reſpect of the Perſon*, as becauſe the Perſons Suitors dwell within the County Palatine. Hob. 77. pl. 101. Owen v. Holt.

S. C. & S. P. cited Vent. 156.

7. *So* it has no Juriſdiction *upon the Lands of the Subject any where*, but only upon the King's own Lands, and his own Revenue, and perhaps on Bonds and Aſſurances given for his Revenue of the Dutchy. Hob. 77, 78. Owen v. Holt.

8. *Suit* in the Dutchy Court brought by the Maſter of the Hoſpital of Wigſton, *to avoid a Leaſe* made for 99 Years, the Plaintiff *ſuggeſted for a Prohibition, that the Lands leaſed were not Parcel of, nor within the Dutchy*; But the *Dutchy Court pretended a Juriſdiction, by Virtue of a Patent confirmed by the Statute* 14 *Eliz.* the Words of which Patent were, *That the Dutchy Court might make Ordinances for the Hoſpital, Quo Modo ſe gererent, converſabuntur & eligerentur*, and the Statute relates to this Patent; But the Court held, that *this does not give them Power to hold Plea of their Poſſeſſions*, but only to make Ordinances for the Government of the Hoſpital, and not to determine the Right of their Poſſeſſions; and a Prohibition was granted per tot. Cur. Roll Rep. 42. Trin. 12 Jac. B. R. Sir Thomas Beaumont v. Hoſpital de Wigſtone.

Toth. 145. cites Mich. 5 & 6 Car. in the Words following,

9. Dutchy Lands *granted from the Crown* may be debated and held Plea of in *Chancery*, and Chancery granted *Injunction* to ſtay Proceedings in the Dutchy Court. Chan. Rep. 55. 7 Car. 1. Levington v. Wotton.

(viz.) Dutchy Court; where Lands are granted of the Crown *in Fee Farm, reſerving Rent*, they are pleadable and determinable in this Court. Hulſe v. Daniel. — And cites Levingſton v. Wiſe, about 8 Car. — And Hampden v. Ferrers, in 14 Car. —— A Decree in Chancery after a Decree in the Dutchy, becauſe it was ordered they had no Juriſdiction, the *Lands* being *out of the Dutchy, but held of Eaſt Greenwich.* Toth. 182. cites 8 Car. Tenants of Barwick v. Cæſar.

10. Court of Chancery not to be ſtayed by an *Injunction* out of the Dutchy. Toth. 182. cites 1633. Barnard v. Langley.

Vent. 155. S. C. and Prohibition denied. —— 2 Keb. 826. pl. 47. S. C and Prohibition denied, per tot. Cur.

11. The Queſtion was, whether Dutchy Court of Weſtminſter ſhall *hold Plea by Engliſh Bill* of Lands of a County Palatine? Hale and Twiſden held it inconvenient to examine their Power after ſo long Continuance and Practice, and ſo, and partly by Admiſſion of the Parties, a Prohibition was denied. 2 Lev. 24. Mich. 23 Car. 2. B. R. Fiſher v. Patten.

12. An *Appeal* by Act of Parliament lies to the Dutchy Court from the Court of Equity at Lancaſter. Vern. 443. a Nota at the End of pl. 417. Hill. 1686.

13. A *Prohibition* was prayed *to the Chancellor of the Dutchy* of Lancaſter, to ſtay Proceedings *in a Suit before him in the Chancery there, being a Scire Facias to repeal Letters Patents granted under the Dutchy Seal*

Seal, and it was ſuggeſted, that the Chancery there was only a Court of Equity, and that they had not any Common Law Proceedings in it, as in the Caſe of the Petty Bag, and that the Sci Fa. ought to have been returnable before the Juſtices of Lancaſter, neither could the Chancellor there ſend a Record to be tried at Law; But after ſeveral Arguments the Court *denied the Prohibition, ſeveral Inſtances being given of Common Law Proceedings in that Court*, and the Charter &c. creating ſuch Power to that Court, as was exerciſed at Cheſter, and there Precedents of Scire Facias were ſhewn in Point. The Charter doth not tie up the Juriſdiction to be either before the Juſtices or the Chancellor &c. Hill. 11 Ann. &c and Trin. 12 Ann. B. R the Queen v. Bailiffs and Burgeſſes of Leverpool.

14. *Bill* was brought in the Dutchy Court *for Lands*. The Defendant demurred, becauſe the Plaintiff did *not aver that the Lands were within the Dutchy*, which is a circumſcribed Juriſdiction, and the Demurrer held good. 9 Mod. 95. Paſch. 10 Geo. Lord Coningsby's Caſe.

For more of the Dutchy Court of Lancaſter at Weſtminſter, See Crompt. Juriſdiction of Courts, 134. to 137. and 4 Inſt. 204. to 211. cap. 36.

(S) County *Palatine*.
To what Place the *Juriſdiction* ſhall *extend*.
Durham.

Fol. 540.

1. THE Juriſdiction of the Biſhop of Durham extends to all Places between Tyne and Tefe. By Reports, 14 Jac. the Biſhoprick of Durham. Roll Rep. 400. pl. 26. the King v. the Biſhop of Durham, —— 3 Bulſt. S. C. & S. P. and Doderidge J. ſaid, that this appears by the Statute of Prerogative. 156. Mich. 13 Jac S. C. & S P. by Coke Ch. J.

2. The Juriſdiction extends as well to the Manors of other Men, as to the Demeſnes of the Biſhop. By Reports, 14 Jac. Roll Rep. 400. pl. 26. S C. & S. P. —— 3 Bulſt. 156, 157. S C. the Court were clear of Opinion, that the Juriſdiction of the Biſhop extended throughout the whole County, and Judgment for the Biſhop.

3. In this County Palatine *there is a Court of Chancery, which is a mix'd Court both of Law and Equity*, as the Chancery at Weſtminſter; herein it differeth from the reſt, that if an erroneous Judgment be given either in the Chancery upon a Judgment there according to the Common Law, or before the Juſtices of the Biſhop, a *Writ of Error ſhall be brought before the Biſhop himſelf*, and *if he gives an erroneous Judgment* thereupon, a Writ of *Error ſhall be ſued* returnable *in the King's Bench*. 4 Inſt. 38.

4. *The Court* of the County Palatine *is an original Court, and* reckoned *in the Number of Superior Courts*; Arg. Saund. 74. Paſch. 19 Car. 2. in Caſe of Peacock v. Bell.

5. A Superſedeas was granted to an *Habeas Corpus*, which iſſued *to remove a Cauſe out of the City of Cheſter, which is a particular Juriſdic-*

tion within the County Palatine of Lancaſter. The Parties were here at Iſſue, and it appeared that *neither of the Parties lived within the Juriſdiction of the Court.* If in a *Real Action* above the Lands appear to lie within a County Palatine, that will be ill; But if the Action be *tranſitory* the Courts above muſt be ouſted by Plea. There *ought to be no Habeas Corpus but upon an Affidavit that the Parties live out of the Juriſdiction*, but *in regard of former Precedents a Superſedeas was granted, the Suit having been well begun in the Inferior Court.* Mich. 11 Ann. B. R. Page v. Leech.

(S. 2) County Palatine. Antiquity and Power.

Courts Palatinate *are three*, 1ſt. *Cheſter* 2dly, *Durham*, erected by William the Conqueror. 3dly, *Lancaſter*, erected by Act of Parliament in Edward the 3d's Time. Theſe were Superior Courts within their Juriſdiction, in as ample a Manner as a Court of Weſtminſter, and the King's ordinary Writs do not run there. Gilb. Hiſt. of C. B. 153, 154

1. COunties Palatine were derived from the Crown by Grant, as it ſeems; for in ſome Caſe *Writ of the King runs there*; *As* where *a Man vouches here*, and prays that the Vouchee may be ſummoned in the County Paiatine, *Proceſs ſhall iſſue to the Lord of the Franchiſe to ſummon him.* Br. Faux Recovery, pl. 15. cites 36 H. 6. 32.

2. Counties Palatine were *certain Parcels of the Kingdom aſſigned to ſome particular Perſons and their Succeſſors, with Royal Power therein to execute all Laws eſtabliſhed, in Nature of a Province holden of the Imperial Crown*; And therefore the King's Writ paſſed not within this Precinct no more than in the Marches. Theſe were *occaſioned from* the Courage of the Inhabitants, that ſtoutly defended their Liberties againſt the Uſurping Power of thoſe greater Kings, that endeavoured to have the Dominion over the whole Heptarchy, and not being eaſily overcome were admitted into Compoſition of Tributaries; And therefore are found *very Ancient*, for Alfred put one of his Judges to Death for paſſing upon a Malefactor for an Offence done in a Place where the King's Writ paſſed not; And the ſame Author reciting another example of his Juſtice againſt another of his Judges for putting one to Death without Precedent, renders the King's reaſon, for that the King and his Commiſſioners ought to determine ſuch Caſes, excepting thoſe Lords in whoſe Precinct the King's Writ paſſes not. Bacon of Government, 73. cap. 29.

3. Every *Earl Palatine* created by the King of England, is *Lord of an intire County, and has therein Jura Regalia, which* Jura Regalia *conſiſt of 2 principal Points*, viz. in *Royal Juriſdiction*, and in *Royal Seigniory*; By reaſon of his Royal Juriſdiction, he has all the High Courts and Officers of Juſtice which the King has; And by reaſon of his Royal Seigniory, he has all the Royal Services and Royal * Eſcheats which the King has; And therefore this County is merely diſjoin'd and ſever'd from the Crown, as is ſaid in the Caſe of the Dutchy, Pl. C. 215. b. So that no Writ of the King runs thither, unleſs a Writ of Error, which being the Dernier Reſort and Appeal is alone excepted out of all their Charters, and cites 15 Eliz. D. 321. and 345. and 34 H. 6. 42. Dav. Rep. 62. a. Trin. 9 Jac. in the Exchequer, in the County Palatine of Wexford's Caſe.

* Ibid. 63. a. ſays that this is to be intended of Treaſons, as were ſuch at the Time when the County Palatine was erected, and not of new Treaſons made by Act of Parliament ſince, and cites 12 Eliz. D. 288. b. 289. a.

5. It

4. It is informed that the Parties dwell in the County Palatine of Lancaſter, and the matter of the Bill is for a ſuppoſed *Treſpaſs in entring upon* the Defendants *Lands, and conſuming his Graſs and Hay* upon the ſame, which this Court doth not Uſe to hold Plea of, therefore Ordered, if it be true, then the Cauſe is diſmiſſed, and the Plaintiff to take his Remedy in the County Palatine of Lancaſter. Cary's Rep. 80. cites 19 Eliz. Hametheſon v. Tounſtall, Covell, Ridgmaden and Baldwin.

5. County Palatine *of Lancaſter was erected* in full Parliament in 50 E. 3. and was granted to his Son John for his Life, and Jura Regalia annexed to it. Per Treby Ch. J. 2 Lutw. 1235. cites 4 Inſt. 204.

6. Their Power was *King-like*, becauſe they *might Pardon Treaſons, Felonies, Murders and Outlawries on them*, they might have made Juſtices in Eyre of Aſſiſe, Gaol Delivery and of the Peace; All Indictments and Proceſſes for Treaſon and Felony were in their Names, but theſe *Royalties were Abridg'd* by 27 H. 8. 24. Per Treby Ch. J. 2 Lutw. 1235. cites 4 Inſt. 204.

7. Before the Statute 27 *H.* 8. 24. the *Biſhop* of Durham was as a King and might pardon all Matters, and had *Jura Regalia*, but that Statute took away part of it. Arg. 1 Bulſt 160. Trin. 9 Jac. in Caſe of Herne v. Lilburn.

8. Treaſons, Felonies and Murders were *pardoned by the Biſhop*, he hath his Judges, and they have their Fees from him, and in Writs of Treſpaſs the Writ is of Treſpaſs done *contra pacem Epiſcopi*, all this was ſo before the 27 H. 8. 24. Arg. 1 Bulſt. 160. in Caſe of Herne v. Lilburn.

9. A *Certiorari to remove a Record* from Durham was denied by B. R. and ſaid they had denied this before, and though they had Power to do it, yet they would not in ſuch a Caſe ouſt them of their Juriſdiction. Per Coke Ch. J. 2 Bulſt. 158. Mich. 11 Jac. Anon.

10. County Palatine *holds Tam libere per Gladium prout Rex Coronam*, and ſo the Biſhop of Cheſter doth his County Palatine. 2 Bulſt. 227. Paſch. 12 Jac. Bowes v. The Biſhop of Durham.

11. A County Palatine *has Jura Regalia* and therefore *may preſcribe to have Bona & Catalla Felonum*; Per Coke Ch. J. and Doderidge; And ſo of Bona Felonum *de ſe*, per Coke. Roll Rep. 399. pl. 26. Trin. 14 Jac. B. R. The King v. The Biſhop of Durham. 3 Bulſt. 156. Mich. 13 Jac. S. C. & S. P. and Judgment for the Biſhop.——So he ſhall have the Goods *of ſuch as ſtand mute*, and the Biſhop ſhall have theſe and Goods *of Felons and Traytors*, as Incidents to a County Palitine, and not be queſtion'd for it in a Quo Warranto to ſhew his Privileges. 2 Bulſt. 226, 227. Paſch. 12 Jac. Boes v. the Biſhop of Durham.

12. The County Palatine of Durham is not of late ſtanding like that of Lancaſter, but is *Immemorial*, and a Cuſtom there is of great Authority; Per Curiam. Mod. 173. Mich. 25 Car. 2. C. B. Anon.

13. The *Stile of the Juſtices in* Durham is always *Juſtices Itinerant*, and there is no Great Seſſions at all in the County Palatine, and therefore the Act of 5 *Eliz. cap.* 25. which gives *the Tales de Circumſtantibus* in Wales, and the Counties Palatine muſt be underſtood of ſuch Courts in the Counties Palatine as anſwer to the Grand Seſſions in Wales. 12 Mod. 181. Hill 9 W. 3. Lamb v. Jenniſon.

(S. 3) It's Juriſdiction as to Perſon and Things.

1. IN Maintenance it agreed per Hank and Norton, that a County Palatine may hold Plea *of Maintenance*, notwithſtanding that they had ancient Juriſdiction, and Action of Maintenance is given by Statute after time of Memory. Contra of Vill which had Conuſance of Pleas before the Action given by Statute, Quære the Diverſity. Br. Cinke Ports. pl. 5 cites 14 H. 4. 20.

2. *Recovery here of Land in the County Palatine* is not void but *Error*. Quære. Br. Faux. Recov. pl. 15. cites 36 H. 6. 32.

See D. 288. b. 289. a. pl 55. &c. Piſch. 12. Eliz.

3. The *Biſhop* of Durham by ancient Charter before the Time of E. 3. *has the Forfeitures for Treaſon, and all Felonies of his Tenants between the Rivers Tine and Teſe in* Northumberland. After Statute 26 H. 8. cap 13. for Forfeitures for Treaſons, A. makes a Gift in Tail of Land held there of the Biſhop to B. B. commits Treaſon, and is Attainted of it; the Biſhop ſhall not have it; for ſuch *Forfeiture of intailed Land was not in eſſe, when the ſaid Charter was granted, and the ſaid Tenant in Tail is Tenant to the Donor and not to the Biſhop.* By all the Judges of England. The Statute 25 E. 3. of Treaſons, does not take away the ſaid Grant to the Biſhop; it only declares what Offences are Treaſon. The *Grant to the Biſhop does not extend to Treaſons enacted after the Grants, nor to new Forfeitures given to the Crown after the Grant.* Jenk. 237. pl. 16.

4. *5 Eliz. cap. 27. All Fines levied before the Juſtices of the County Palatine of Durham, authorized for that Purpoſe, of Tenements within the County which ſhall be read and proclaimed two Days in the Seſſions, in preſence of the Juſtices of Aſſiſe at Durham, or one of them at the ſame Seſſions that the ſame ſhall be ingroſſed, and at two general Seſſions next after, ſhall be of like Force as Fines levied with Proclamations, before the Juſtices of C. B. at Weſtminſter.*

5. Where it appeared by a Book heretofore preſented to the Queen's Highneſs, under the Hands of Dyer Ch J. Weſton J. and Harpar J. of C. B. and Carus J. of B. R. and remaining (by Force of her Majeſty's Warrant) of Record in the Court of Chancery, *touching the Juriſdiction of the County Palatine of C. that before H. 3. all Pleas of Lands and Tenements, and all other Cauſes and Contracts, and Matters reſiding and growing within the ſaid County Palatine* of C. are pleadable, and *ought to be* pleaded and heard, and *Judicially determined within the ſaid County Palatine of C. and not elſewhere* out of the ſaid County Palatine; and if any be heard, pleaded or Judicially determined out of the ſame County, then the ſame is void, and coram non Judice, (*except* it be in Caſe of *Error, Foreign Plea, or Foreign Voucher*) and alſo that no Inhabitant within the ſaid County Palatine by the Law, Liberties and Uſages of the ſame, be called or compelled by any Writ or Proceſs to appear, or anſwer any Matter or Cauſe out of the ſaid County Palatine for any the Cauſes aforeſaid, (as by the ſaid Book among other Things more at large appears) and where now of late the Plaintant hath exhibited a Bill of Complaint in this Honourable Court, for and concerning Lands and Tenements lying within the ſaid County Palatine, and hath taken Proceſs againſt the ſaid Defendant in that behalf, who has thereupon appeared and by his Counſel made Requeſt to this Court, that for the Cauſes aforeſaid the Matter here exhibited againſt him might be from henceforth diſmiſs'd; wherefore foraſmuch as W. S. has made Oath that the ſaid Lands do lie within the ſaid County Palatine,

Palatine, and that the ſaid Defendant is inhabiting and dwelling within the ſaid County; therefore the ſaid Cauſe is from henceforth diſmiſſed, and remitted to the Chamberlain of C. and other her Majeſty's Miniſters there, according to the Tenor of the ſame Book. Cary's Rep. 85, 86. 19 Eliz. Miles v. Brearton.

6. *Any Dwelling there muſt appear upon the Proceſs, and plead their Priviledge*, by the Maſter of the Rolls's Opinion. Toth. 218. cites Herenden's Caſe in 36 & 37 Eliz.

7. If the *Defendants dwell out of the County Palatine*, he who has Cauſe to complain in Equity may alſo complain here in the Chancery. For in regard that Proceedings in Chancery do bind the Perſon only, if the Perſon be out of the Juriſdiction the Chamberlain of Cheſter cannot relieve the Party, and therefore *Ne Curia Regis deficeret in juſtitia exhibenda*, the Suit ſhall be in the Chancery here, otherwiſe the Subject may have Right and no Remedy, which would be inconvenient. 12 Rep. 113. Hill. 11 Jac. Earl of Derby's Caſe.

8. Action of *Debt brought to be tried in Durham*, and the *Record ſent to the Chancellor of Durham, becauſe the Biſhop's See was empty*, and *before the Day given by the Judges, a Biſhop was elected*, and *he ſent the Record and not the Chancellor*. Brownl. 51. Trin. 15 Jac. Perſon v. Middleton.

9. Juriſdiction of the County Palatine is allowable between Parties dwelling in the ſame County, and for * *Lands* there, and for Matters local, but diſallow'd where the Bill in Chancery was to have Account of Profits by a Truſtee of Infant's Lands, and of Monies received on Bonds, and for Writings &c. but without Coſts. Chan. Caſes 40. Hill. 14 Car. 2. Edgeworth v. Davis. N. Ch. R. 37. 14 Car. 1. Sherbourn v. Houghton. S. P —— As for *Things tranſitory*, tho' they are within the County Palatine the *Plaintiff may allege them to be done in any Place within England*, and Defendant may not plead to the Juriſdiction of the Court, that they were done within the County Palatine. 12 Rep. 113. cites D. 13. El. 202. and ſays, it was reſolved upon the Certificate of the Lord Dyer and other Juſtices in the Time of Q. Eliz.

It is order'd that *upon Affidavit* made, that the *Defendants dwell within* the County Palatine of Cheſter, and the Cauſe of the *Bill is to be relieved of certain Debts there*, the Cauſe is therefore diſmiſſed into the ſaid County. Cary's Rep. 116 cites 21 & 22 Eliz. Heyward v. Sherington. —— N. Ch. R. 51. Moor v. Lady Somerſet —— Fin. R. 452. Gerard v. Stanley.

* Cary's Rep. 83, 84, 85, 86. Willoughby v. Brereton.

Where the *Defendant liv'd in the County Palatine, and the Lands lay there alſo*, and a Bill was brought for the ſame in Chancery, it was for that Reaſon diſmiſed. Toth. 144. cites 13 & 14 Eliz. Botely v. Savil.

10. *Ejectment* in B. R. of Lands in the County Palatine of Lancaſter; upon Trial at the Aſſiſes in Lancaſter, the Judge caus'd the Poſtea to be mark'd, and to be mov'd in Court, whether it lies, the Defendant being in Cuſtody; Et adjornatur. Raym. 81. Mich. 15 Car. 2. B. R. Long v. Emott.

11. It has been the conſtant Practice Time out of Mind, that *Witneſſes dwelling out of the County Palatine have been examined by Commiſſion*, iſſuing out of the Court of Exchequer of Cheſter under the King's Seal of the ſaid County Palatine, and executed where the Parties pleaſe, either *in England or in Foreign Parts*, for procuring their Examinations. Fin. R. 452. Trin. 32. Car. 2. Davis v. Davis.

12. It was *pleaded* that *Cheſter* is an ancient County Palatine Time out of Mind, and had Royal Franchiſes belonging to a County Palatine, which had always been allow'd in Law. And *that all Suits concerning Lands, Contracts, Cauſes lying ariſing or growing within the ſaid County Palatine, are determinable there*, and not elſewhere, *Treaſon, Error, Foreign Plea*, and *Foreign Voucher only excepted*. And that the Court of Exchequer there hath been Time out of Mind a Chancery Court for the County Palatine, for the hearing and determining all Matters and Cauſes of Equity ariſing in the ſaid County Palatine, ſubject to an Appeal of this Court, and that the now Plaintiff and Defendant Cary's Rep. 85. Willoughby v. Brereton.

ſendant at the Time of exhibiting the ſaid Bill in the Court of Exchequer in Cheſter, and for ſeveral Years before and after, were, and are Inhabitants in the ſaid County Palatine, and that the Lands charged with the ſaid 1500l. and all the Matters whereon the ſaid Decree was grounded, did, and do lie, and are ſituate, and did ariſe within the ſaid County Palatine. And that Time out of Mind it hath been the *conſtant Practice* of the ſaid Court of Exchequer, *that Witneſſes dwelling out of the ſaid County Palatine have been examined by Commiſſion iſſuing out of the ſaid Court of Exchequer under the King's Seal of the ſaid County Palatine, and executed where the Parties pleaſe or deſire, either in England or in Foreign Parts*, for procuring their Examinations; and therefore demands the Judgment of this Court, if by the Juſtice thereof ſhe is compellable to make anſwer to the ſaid Bill. The Court allow'd the Plea, and diſmiſs'd the Bill with Coſts. Fin. R. 452. Trin. 32 Car. 2. Davis v. Davis.

S P. ruled accordingly. Ibid. pl. 182. by Ld. K. North, the ſame Day.

13. No *Appeal* lies in Chancery from a Decree in the County Palatine, but if any Appeal lies it muſt be to the King himſelf. Per North Keeper. Vern. 184. pl. 181. Trin. 1683. Jennet v. Biſhop. Partington v. Tarback.

14. Bill of *Lands* within the County Palatine was brought in Chancery, and to entitle the Court to Juriſdiction, ſuggeſted *Prior Incumbrances to Parties living out of* the Juriſdiction, but no Proof was of it, but it appearing that the *Proceedings in the County Palatine were unjuſt.* North K. ſaid, he would retain the Cauſe and conſider of it. Vern. 298. pl. 292. Hill. 1684. Hall v. Dowthwaite.

15. *Debt on a Bond* againſt the Defendant as Executor, and in the *Margin of the Declaration* the County *was* written thus; *Cheſter ſſ.* and the Plaintiff declared upon a Bond made by the Defendant's Teſtator, ſealed and delivered apud Travin in Com. Prædict' &c. The Defendant pleaded plene Adminiſtravit, and at a Trial the *Plaintiff had a Verdict and Judgment*; and now it was moved in arreſt of Judgment, that all the Proceedings were Coram non Judice, becauſe it *appeared upon the Face of the Record, that the Bond was made at a Place within the Juriſdiction of the County Palatine* of Cheſter, ſo that by the Plaintiff's own ſhewing, this Court has no Juriſdiction of this Cauſe; Adjudged by the Court, that the *Defendant* had loſt that Advantage which he might have if he had not pleaded in Chief, for he *ought to have come in Time and pleaded to the Juriſdiction* &c. *but now he is foreclоſed* to ſay any Thing againſt it, having admitted the Juriſdiction by pleading in Chief. Carth. 11, 12. Mich. 3 Jac. 2. B. R. Jennings v. Hankyn.

Davis v. Speed. 5 Mod. 143. S. C. adjudg'd for the Plaintiff; and Holt Ch. J. cited the Caſe of Jennings v. Hawkins.

16. The Juriſdiction of a County Palatine *muſt be pleaded* and demurring to the Declaration is not ſufficient, and where a Defendant *pleads* to the Juriſdiction of B. R. viz. that the Cauſe of Action did ariſe within the County Palatine, it muſt be *averr'd* in ſuch Plea, that either the Defendant *dwells* in the County Palatine, or that he *hath Goods and Chattles there ſufficient* by which he may be attach'd, otherwiſe the Plea cannot be allow'd leaſt there be a failure of Juſtice. Carth. 355. Trin. 7 W. 3. B. R. Davis v. Stringer.

17. County Palatine *is a general Court for all the Subjects of that Palatinate*, and *not merely for the Cauſes ariſing within the Palatine*; for if a Debtor goes from the Foreign into Palatine, his Objections go along with him as much as if he went from one Kingdom to another; and if it were otherwiſe a Palatinate Juriſdiction would be a Shelter and Aſylum to Debtors; for no Proceſs but the Supreme Prerogative Proceſs runs there; and therefore it is duly determined, tho' the Cauſe of Action

tion be out of the Palatinate; yet if the Party be a Subject of that Palatine, as he is by coming into that Dominion, that the Action there may be brought againſt him. Gilb. Hiſt. of C. B. 153.

(S. 4) Juriſdiction allow'd or ouſted. In what Caſes.

1. THE *King ſhall have Quare Impedit* of Advowſon *in Durham*. Br. Cinque Ports, pl. 21. cites 5 E. 2. Quare Impedit 165.

2. *Aſſiſe in the County of Suffolk*; the *Tenant pleaded Releaſe, bearing Date at Cheſter*; and it was ſaid, that at this Day it ſhall be tried by the Statute of 9 *E.* 3. Br. Juriſdiction, pl. 104. cites 8 Aſſ. 27.

3. *And* by ſome, if *a Man in Bank vouches in Cheſter*, Proceſs ſhall iſſue here to warn him. Ibid.

4. *And in Dower* it was pleaded, *that the Feme took Dowment of Land in Durham*, and the Feme was compelled to anſwer. Ibid.

5. On a *Foreign Voucher in Com. Cheſter of three, whereof two were to be ſummoned in Com. Cheſter, and the third in a foreign County, all ſhall be ſent into C. B.* and Proceſs made there as well to Cheſter as to the other County, *and when the Warranty is determin'd, all ſhall be remanded*; Quod Nota. Br. Cinque Ports, and County Palatine, pl. 2. cites 49 E. 3. 9. Br. Voucher, pl. 41. cites S. C —— Br. Juriſdiction, pl. 16. cites S. C.

6. *Debt*, and counted *upon Leaſe of a Benefice in Durham made for Years in Middleſex*; and the Defendant demanded Judgment if the Court would take Conuſance, becauſe the Benefice is in a County Palatine of D. Ubi breve Regis non currit, and the Writ awarded good, by which the Defendant pleaded levied by Diſtreſs at D. Skrene ſaid, all is in Tithes, and no Land in which a Man may diſtrain, Priſt. And the other averred, that he had Land in Demeſne Parcel of the Benefice; and the others e contra. And per Hill, Hank, and Thirn, it ſhall be tried by the County Palatine, and remanded here; For per Hank, Foreign Plea in Durham ſhall be try'd here, and remanded, and ſo we command the Record to be tried there, and after to be remanded here; And Thirn ſaid, oftentimes we have ſent to Lancaſter to be try'd there, where a Thing is pleaded triable in the County Palatine. Br. Juriſdiction, pl. 25. cites 11 H. 4. 40.

7. Where an *Eſtate* is made, and is *general*, as well within Franchiſe as without, this ſhall bind County Palatine; Per Hody. Br. Cinque Ports, pl. 17 cites 19 H. 6. 1 & 2.

8. If a Man *vouches Foreign* in Cheſter *to Warranty, or pleads Foreign Plea*, the Parol ſhall be removed; Contra of *Sokemen*, who are *impleaded by Bill where the Franktenement is in the Lord*, and this ſeems to be Copyholders. Br. Cinque Ports, pl. 1. cites 34 H. 6. 42.

9. If a Man be *Surety that A. ſhall keep the Peace*, and he breaks the Peace, and the other *has Land in Durham*, the King ſhall ſend to the Biſhop of Durham, or to his Chancellor, to make Execution. Br. Cinque Ports, pl. 14. cites 1 E. 4. 10. by all the Juſtices.

10. *Outlawry in Durham or Cheſter ſhall not ſerve in Bank*; *Contra* by Littleton J. *of Outlawry in Lancaſter*, for *this is by Parliament* in the Time of E. 3. and *the others are by Preſcription*. Br. Cinque Ports, pl. 15. cites 12 E. 4. 16.

11. *Recovery*

11. *Recovery in Bank of Land in Durham, Lancaſter, or Cheſter, is void*; Contra of Recovery here of Land in the Cinque Ports, where no Exception is thereof, taken for Law. Br. Cinqne Ports, pl. 18. cites 9 H. 7. 12.

12. *Iſſue in B. R. triable in County Palatine of Lancaſter, ſhall be tried by them of Lancaſter, and remanded hither*; Per Brudenel and Tremaile J. For they ſaid that this was Parcel of the Crown, and exempted afterwards. Br. Cinque Ports &c. pl. 10. cites 21 H. 7. 33.

13. If *Error* be *in Cheſter, and returned here, we ſhall award Execution*; Per Fineux Ch J. Quod non negatur. Br. Cinque Ports, pl. 11. cites 21 H. 7. 35.

14. As to *Execution upon a Statute Staple* in the County Palatine Br. Cinque Ports, pl. 20. cites F. N. B. 132.

15. *Chancery* will in no wiſe retain a *Suit of Lands* which lie *in the County Palatine of Cheſter*. Toth. 181. cites 12 & 13 Eliz. fol. 399. Davenport v. Dean.

16. The Plaintiff exhibited his Bill as a *privileged Man to Sir Francis Kempe, Prothonotary of this Court*, for Lands lying in the County Palatine of Cheſter, and for that it appeareth by Letters Patents openly ſhewed in Court, under her Majeſty's Great Seal of England, that this Court by any Privilege ſhould not hold Plea of any Lands lying within the ſaid County Palatine, it is therefore ordered to be diſmiſſed, if the Plaintiff ſhew not good Cauſe. Cary's Rep. 155. cites 21 Eliz. Lomley v. Green & al.

17. It is order'd that if the Plaintiffs do charge the Defendants by their Bill for the *Iſſues and Profits of Lands*, which do lie in the County of Lancaſter *meerly by way of Account*, then the Defendants ſhall not be compelled to anſwer; if the Defendants be charged in *reſpect of their Promiſe*, then they are to anſwer. Cary's Rep. 162. cites 21 Eliz. Wingfield v. Fleetwood & al'.

18. The *Sheriff of Durham* was *ſued before the Council of York for an Eſcape*, and becauſe this concern'd his Office of Sheriff, and that he was an Officer of the Biſhop of Durham, and ſo the Juriſdiction of the County Palatine impeach'd, a *Prohibition was granted*; and per Whitlock and Bridgman when Suits come into Chancery, which concern the County Palatine of Durham and Cheſter, the Lord Chancellor will diſmiſs them. 2 Roll. Rep. 53. Mich 16 Jac. B. R. Selby's Caſe.

19. *Mandamus to the Mayor of Wiggan* in Lancaſhire, *to reſtore an Alderman* of Wiggan to his Place. The Mayor *return'd, that they were a Corporation in Lancaſhire, which is a County Palatine*, and therefore were not compellable to anſwer in B. R. The Mayor for this Return was *fin'd* 100 *Marks*, and it was ſaid, that the Biſhop of Durham had been fined 1000, for ſuch another Return. Sid. 92. pl 14. Mich. 14 Car. 2. B. R. Wiggan Mayor's Caſe.

20. A Suggeſtion for a Prohibition to the Chancery of Cheſter was, becauſe a Bill was preſer'd there before the Earl of Derby, Lord Chamberlain there, in which he ſet forth, that all the Inhabitants of Cheſhire have a Privilege not to be ſued elſewhere, and that the Defendant in the Prohibition knowing it, had notwithſtanding *ſued* him *in B. R. in Trover* for a Cloak &c. to which he appear'd, and that the Plaintiff in the Action intended to proceed there againſt this Privilege; But it was anſwered, that admitting they have ſuch Privilege, yet it *appears by his own Bill that he has appear'd here and pleaded, and ſo it is now too late* to claim his Privilege, but that here no Privilege is allowable to him; For though in Trover for Profit of Land, or other Action in which Realty of the Land may come in Queſtion, yet in Action merely Perſonal there ſhall be no ſuch Privilege. A Prohibition was awarded,

and

and the Court ſaid, that in Matters Tranſitory it is in the Plaintiff's Election. Sid. 309. pl. 21. Mich. 18 Car. 2. B. R. Minſhall v. Starkey.

21. If one be a *Priſoner in B. R.* againſt whom one has a Cauſe of Action ariſing within the County Palatine, ſo that his being a Priſoner here, hinders that Perſon from proceeding againſt him below; Sure the Cauſes ariſing within the County Palatine ſhall not hinder us from having Conuſance of it here, but that is where he his *firſt in Cuſtody of Marſhal for Cauſe*, and another, or the ſame Party, has another Cauſe of Action ariſing within the County Palatine; And if the Truth were ſo, that the Defendant was in Cuſtody of the Marſhal before, for a Cauſe ariſing within our Juriſdiction, the Defendant inſtead of Demurring ought to ſhew it in Support of our Juriſdiction. Per Holt Ch. J. 12 Mod. 535. Trin. 13 W. 3. Wilbraham v. Lownds.

22. *But* any Plea of Privilege is good to a Declaration againſt one in Cuſtodia Mareſhalli, if he was *brought wrongfully there*; Per Holt. Ch. J. 12 Mod. 535.

23. *Plaintiff had a Decree in the Equity Court of the County Palatine* of Lancaſter, and *Defendant being now in the Guards and living out of the Juriſdiction, Plaintiff brought this Bill in Aid of a former Decree.* Defendant by Anſwer denied his knowing any Thing of the Decree, but admitted the Proceeding there, and Plaintiff now moved for Injunction. But per Lord Chancellor's Injunction was deny'd, and ſaid, he never knew a Bill in this Court to aid Juriſdiction in an Inferior Court, and Plaintiff's Equity for Injunction muſt appear upon Proceedings here and upon Records of this Court, and it being mention'd rhat Plaintiff ſhould have brought a Certiorari Bill, it was objected that *Proceedings could not be removed out of County Palatine no more by a Certiorari Bill, than by Writ of Error at Law, in Caſe of Action or Judgment there.* MS. Rep. Trin. 1734. Duckingfield v. Noſworthy.

(S. 5) Proceedings and Pleadings.

See Adjournment (E) pl. 4. 5, 6, 7. and the Notes there, and (F) per totum.

1. IN Aſſiſe in the County of Suffolk the Tenant *pleaded Releaſe bearing Date in Cheſter.* Herle ſaid, to ſuch Deed a Man need not anſwer where Action is uſed upon ſuch Deed nor by Defence as here. Br. Cinque Ports, pl. 19. cites 8 Aſſ. 27.

Br. Juriſdiction, pl. 104. cites S. C.

2. *And* by ſome, if a Man in this Court *Vouches in Cheſter*, Proceſs ſhall go from hence to Cheſter; For all is the Power of the King. But ſee now *the Statute of* 9 *E.* 3. for ſuch Foreign Trials. Br. Cinque Ports, pl. 19. cites 8 Aſſ. 27.

Br. Juriſdiction, pl. 104. cites S. C.

3. *And Exchange for Land in Durham* may be pleaded in Bank. And the ſame per Shard of Land in Ireland, and the Party ſhall be compell'd to anſwer to it. Br. Cinque Ports, pl. 19. cites 8 Aſſ. 27.

Br. Juriſdiction, pl. 104. cites S. C.

4. Where a *Thing pleaded is in Bank triable in County Palatine*, the Record ſhall be ſent there to be try'd, and after ſhall be ſent back here; Per Hank and Culpeper. Br. Trials, pl. 27. cites 11 H. 4.

5. In ſpecial Caſes they may *award Proceſs to the* County Palatine. Br. Voucher pl. 151. cites 10 H. 6. 20.

6. *Treſpaſs in Lancaſter*, the *Defendant pleaded Releaſe made in a Foreign County*, by which the *Day prefix'd to the Party's Day in Bank* 15 *Paſch.* And this ſeems to be by Equity of the Statute of Foreign

Voucher to try it in Bank. And per Newton it may come into Chancery by Certiorari, and be ſent into Bank by Mittimus at the Suit of the Party quod nota; For County Palatine cannot try a Thing hors. And a Man cannot Commence the Action elſewhere but in the County Palatine, but where Conuſance of Pleas is, ſuch Foreign Plea goes to the Juriſdiction, and he ſhall commence this Action at the Common Law, and this is a Failure of Right. Br. Trials, pl. 45. cites 22 H. 6. 48.

7. By *Voueher* or *Foreign Plea* in Cheſter, *the Parol ſhall be remov'd.* Br. Error, pl. 19. cites 34 H. 6. 42.

8. Parties were at *Iſſue upon a Thing triable in the County Palatine of Lancaſter.* Per Brudnell, if a Man *Vouches in Lancaſter*, the *Juſtices write to them to try it, and remand it here*, and if they give *erroneous Judgment* Writ of Error lies here. And *where Judgment is given here, we write to them to make Execution there.* But if falſe Judgment be given in Wales and Calice it cannot be reformed here; For thoſe never were Parcel of the Crown, but the County Palatine was Parcel of theCrown, and after was exempted, and by the Statute it ought to be try'd where the Writ is brought, and Tremaile conceſſit. Br. Trials, pl. 58. cites 21 H. 7. 33.

9. A *Writ was directed to the Juſtice of Cheſter*, or his Deputy, and this was to try a local Iſſue. He who was then Juſtice &c. made a *Return by the Name of John Bradſhaw, Chief Juſtice* &c. Adjudged a good Return, becauſe the Direction of this Writ implies the Superior, (in as much as it mentioned the Deputy) and the *Statute of H. 8. ſtiles him the High Juſtice*, and High and Chief are all one, and this Court will not intend that there is any other Juſtice than he who returned this Writ. Sid. 64. Mich. 13 Car. 2. B. R. Barrows v. Huit.

1 Lev. 50. S C. and it was a Certiorari directed to the Juſtice of Cheſter aut ſuo Deputato, and after divers Motions the Court held the Return good. —— Keb. 165. pl. 120. and 187. pl. 168. S. C mentions the Mittimus to be directed only Juſticiario of Cheſter, and certified by the Chief Juſtice, and the Return held good; for the Court will not preſume any other.

10. Upon a *Judgment in B. R.* a *Teſtatum Fieri Facias iſſued to the Sheriff of Cheſter*, who *returned Fieri Feci*, and that the Goods remained in his Hands for want of Buyers; thereupon *a Venditioni Exponas was awarded to him*, of which *he made no Return*, nor gave Satisfaction to the Plaintiff, who thereupon moved for an Attachment. It was moved in the Sheriff's Behalf, that a Fieri Facias cannot iſſue out of this Court into a County Palatine; Sed non allocatur; and an *Attachment was granted.* Raym. 171. Mich. 20 Car. 2. Needham v. Bennett.

11. *Indictment for forging and publiſhing a Deed at Cheſter, was ſent thither to be tried by Mittimus*, and was accordingly tried; and it was objected, *that the Mittimus was directed to the Juſtices of Aſſiſe* at Cheſter, *and not to the Chamberlain*, as it ought; ſed non allocatur; and ſaid, that ſo it is in Writs of Proceſs, they are directed to the Chamberlain, to command the Sheriff to execute them, but not to command the Judges to try the Cauſe; for all the Records to be tried are immediately ſent to the Judges in all Counties Palatine, and not to the Chamberlain. 2 Lev. 111. Trin. 22 Car. 2. B. R. The King v. Newton.

12. In *Error* to reverſe a Judgment in Durham in Ejectment, it was urged, that *Per Cur. was omitted in the Judgment.* But it was anſwered and reſolved, that *Ideo Conſideratum eſt*, without ſaying Per Cur. *was good enough in the County Palatine Courts*, which are look'd upon in that reſpect as the Courts of Weſtminſter, and ſo Judgment was affirmed. 12 Mod. 181. Hill. 9 W. 3. Lamb v. Jeniſon.

(S. 6) Error. Of Writs of Error to the County Palatine.

1. ERROR in the County Palatine ſhall be *redreſs'd here* in England; and per Newton, Error in Wales ſhall be redreſs'd before the Juſtices Errants there; But if there be no ſuch Juſtices there, it ſhall be redreſs'd here in Curia Regis; Quære inde; For per Forteſcue and others, it ſhall be redreſs'd in Parliament, viz. Error in Wales. Br. Error, pl. 74. cites 19 H. 6. 12. Br. Cinque Ports, pl. 8. cites S. C.

2. Upon Error in Cheſter, *Writ of Error of Common Form*, as other Writ of Error is, *ſhall be directed to the Juſtice of Cheſter, returnable in B. R.* and they ſhall have *Day in which three Counties may be held to reverſe or affirm it*, and *if they will reverſe it the Record ſhall not be ſent into B. R.* and *if they will not reverſe it the Record ſhall come into B. R.* and *if it be reverſed there he ſhall loſe* 100 *l.* Br. Error, pl. 19. cites 34 H. 6. 42.

3. Error in County Palatine ſhall be reformed here. Contra of Error in Calais or Wales; For thoſe never were Parcel of the Crown. Contra of County Palatine; For *it was Parcel, and after was exempt*; and per Fineux Ch. J. Error in County Palatine *ſhall be redreſſed there by Commiſſion*, and not here. Br. Error, pl. 101. cites 21 H. 7. 33.

4. If Error be in Cheſter, and it is *reformed here in B. R.* we will grant Execution here; Per Fineux Ch. J. Quod non negatur. Br. Error, pl. 103. cites 21 H. 7. 35.

5. An erroneous Judgment is given at Cheſter; a Writ of Error is brought *out of the Chancery at Weſtminſter* to reverſe this Judgment, and ſhall be directed *Camerario Ceſtriæ ſive ejus Locum tenenti, returnable in B. R.* 3 Months after the Delivery of it; the Tenants there, called *Judicatores Terrarum*, have a Month after the Delivery of the Writ of Error there, to conſider of the Judgment, and to reform it if they ſee Cauſe; if they do not reverſe it, and the Judgment is found erroneous upon this Writ of Error in B. R. as aforeſaid, they forfeit 100 l. to the King by the Cuſtom, there to be levied upon them; this Affirmance or Reverſal of the ſaid Judgment extends only to *Errors upon the Record*, and not to *Error in Facto*. If they diſaffirm or affirm the Judgment, another *Special Writ* of Error may be brought upon this *in the King's Bench*, if the Party will. Often adjudged. Jenk. 71. pl. 34. cites Dy. 345. Jenk. 240. pl. 22. S. P.

6. Error on a Judgment in the County Palatine of Durham, wherein the Plaintiff *declared, that the Defendant was indebted to him apud Civitat' Durham in* 39 *l. for divers Wares &c. to him ſold and delivered.* Exception was taken to the Declaration, becauſe it was *not ſaid* (Ibidem) ſold and delivered, and ſo it does not appear *to be within the Juriſdiction*; for the Goods might be delivered in another Place out of the Juriſdiction of the ſaid Court. But it was anſwered, that though this is a good Exception to a Declaration in inferior Courts, yet the County Palatine Court is an Original, and reckoned among the Number of Superior Courts, As in the Statute 3 Jac. cap. 8. Executions in Counties Palatines, in certain Caſes there ſpecified, ſhall not be ſtayed by Writ of Error without Security &c. and they never certify their Juriſdiction upon a Writ of Error, no more than the Court of Common Pleas, becauſe *the Court here Judicially takes Notice of their Juriſdiction*, and the Entry of their Judgments there, is like the Entry of the Judgments in Sid. 330. pl. 12. S. C. and Judgment affirmed.—2 Keb. 182. pl. 9. Hiccocks v. Bell, S. C. adjornatur. And Ibid. 226. pl. 82. S. C. and Judgment affirmed per Cur. præter Keeling.—S. C. cited Lev. 208.

that Judgment was affirmed, but mentions it as a Caſe in the Royal Franchiſe of Ely.

in theſe Superior Courts, for it is Ideo Conſideratum eſt generally, (without ſaying per Curiam) therefore this being a Superior Court, and the Rule is, that nothing ſhall be intended to be out of the Juriſdiction of Superior Courts, except what particularly appears to be ſo, whereupon the Judgment was affirmed. The Court at firſt were divided, Windham and Morton held the Declaration good, but Kelinge Ch. J. and Twiſden e contra; But afterwards Twiſden ſaid he had adviſed with the other Judges, who were all of Opinion, that the County Palatine was an Original Superior Court, and therefore the Declaration good; wherefore the Judgment was affirmed by Twiſden, Windham, and Morton, Kelinge remaining in his former Opinion. Saund. 73. Paſch. 19 Car. 2. Peacock v. Bell.

7. It was moved to ſtay the Return of a Writ of *Error out of the Chancery, to reverſe an Outlawry in the County Palatine of Cheſter*, according to the Opinion of the Lord Coke, 4 Inſt. 214. Sed non allocatur; becauſe this old Uſage is gone by the Statutes 32 H. 8. cap. 13. and 33 H. 8. cap. 13. before which laſt Statute there was no Outlawries in Cheſter, for Coroners are introduced there by that Statute, and they had no Chief Juſtice there till Queen Elizabeth's Time, for till then, there being but one, there could be no Chief. 2 Salk. 500. Trin. 12 W. 3. B. R. Wilbraham v. Poley.

For more of County Palatines, See Crompt. Juriſdiction, 137. to 142.——4 Inſt. 211. to 216. cap. 37. of the County Palatine of Cheſter. And Ibid. 216. to 220. cap. 38. of the County Palatine of Durham.——Prynn's Animadverſions &c. on 4 Inſt. 151, 152.

(S. 7) Ely.
Royal Franchiſe of Ely.

1. IN *Error of a Judgment* in Ely Court, and aſſigned, that in the Stile of the Court it is *not ſet forth, whether it be held by Charter or Preſcription.* 2dly, That the *Judgment is Conſideratum eſt, without ſaying Per Curiam.* 3dly, The Writ *of Inquiry is Per Sacramentum duodecem, without ſaying Proborum & legalium Hominum*; But all theſe Exceptions were over-ruled, becauſe it being a Royal Franchiſe, it is not as in Caſe of other Inferior Courts. Lev. 208. Paſch. 19 Car. 2. B. R. Pigge v. Gardiner.

2. *Error* of a Judgment in Ely Court in Aſſumpſit was aſſigned, that that it is *not ſaid, that the Goods for which the Action was brought were ſold and delivered within the Juriſdiction of the Court*; But Judgment was affirmed; becauſe it is not as in the Caſe of other Inferior Courts. Lev. 208 in Caſe of Pigg v. Gardiner, cites it as Paſch. 19 Car. 2. B. R. Peacock v. Bell.

3. *Ely is not a County Palatine, but only a Royal Franchiſe*, and therefore the *Defendant cannot plead to the Juriſdiction of this Court*, viz. that the Lands &c. or the Cauſe of Action are, or did ariſe in Ely, for that is only particular to a County Palatine, which Ely is not; for the *Biſhop of Ely can only demand Cognizance of Pleas*, which is all the Franchiſe he hath as to this Purpoſe; and ſuch are the *Franchiſes of the Cinque Ports*, which *are the ſame with this of Ely*; and it is uſual for Appeals of Murder to be brought in this Court, when the Fact was committed

mitted in either of theſe Franchiſes, and the Trials here concerning Lands in Ely are good; but it is not ſo where Lands lie in a County Palatine. Carth. 109. Hill. 2 W. & M. in B. R. Cotton v. Johnſon.

(T) The Court of the *Council of York*, *and* the * *Marches*.

* *This Court, and all Juriſdictions belonging or exerciſed in the ſame, is taken away by the Statute 1 W. & M. Stat. 1. cap. 27. S. 2.* —— See Tit. Marches of Wales (A)

1. THEY ſhall not hold Plea upon a penal Statute. Mich. 12 Jac. B. per Coke ſaid to be reſolved.

2. They ſhall not hold Plea upon a Replevin, becauſe none ſhall hold Plea of a Replevin without Writ, for the Sheriff could not without Writ before the Statute of Marlebridge, cap. 21. Mich. 7 Jac. B. per Coke. Bulſt. 110 Paſch. 9 Jac. Baker v. Dickenſon S. P. and a Prohibition was granted ——13 Rep. 31. pl. 11. Hill. 6 Jac. by Coke Ch. J. in the Caſe of Prohibitions. S. P.

3. The Council of York cannot hold Plea of a Plaint in Nature of a Detinue vi & Armis, though Detinues are expreſsly within their Inſtructions, becauſe this is in Nature of a Treſpaſs. Mich 7 Jac. B. between *Curtis and Cooke*, reſolved, and a Prohibition granted.

4. If a Man, having Bona Notabilia in ſeveral Dioceſes, makes an Infant his Executor, and dies, and Adminiſtration durante minore ætate is granted to B. in the Prerogative Court, and he is bound by Obligation to render a true Account; if B. be after compelled in the Court of Marches in Wales, to give Bond to render an Account there, a Prohibition lies, becauſe they there have no Autnority to queſtion any Thing that belongs to the Court Chriſtian, if it be not for Adultery. Paſch. 17 Jac. B. Drinkwater's Will.

5. The Obligee cannot ſue upon an Obligation * in Engliſh [by Engliſh Bill] before the Council of York, though it be within their Inſtructions, for the King cannot alter the Law without Parliament, and there cannot be ſuch a Suit in Chancery, and by this the King ſhould loſe his Fine; Ergo. Mich. 10 Jac. B. per Curiam, between *Guy and Sedgewick*, and the Biſhop of York. Mo 874. pl. 1220. S. C. adjudged, and alſo becauſe it is againſt the Liberty of the Subject, who peradventure ought to have Error or Attaint.——Godb. 201. pl. 287. the Archbiſhop of York v. Sedgwick. S. C. adjudg'd accordingly.

* The Original is, (en Engliſh) but both Mo. and Godb. are (by Engliſh Bill)

6. If the Council of York or Wales begin with a Sequeſtration, a Prohibition lies; for a Sequeſtration is not to be granted there till a Contempt. Hill. 22 Jac. B. R. *Vaghane's Caſe*, Prohibition granted to York.

7. An Information cannot be preferred in the Marches of Wales, againſt any Man that is not within the Juriſdiction of the Court, to compel him to anſwer to it. Hill. 11 Car. B. R. in one *Foſter's Caſe*, per Curiam.

8. If a Man ſues in the Marches of Wales by Engliſh Bill in an Action upon the Caſe for 50 l. (as he may by the Inſtructions there) upon a Promiſe, and the Defendant pleads the Statute of Limitations,

and this is over-ruled, and **thereupon** the 50 l. is decreed againſt the Defendant, without awarding any Commiſſion in Nature of a Writ of Inquiry of Damages, **a Prohibition lies, for this is but an Action upon the Caſe by Engliſh Bill. Mich. 14 Car. B. R. between** *Hancock and Mervin*, **per Curiam, a Prohibition granted. Intratur, Trin. 14 Car. Rot. 392.**

As to the Court *of the Preſident and Council in* the Dominion and *Principality of Wales, and the Marches* of the ſame. See 4 Inſt. 242. &c cap. 48.

As to the *Preſident and Council of York.* See 4 Inſt. 245. cap. 49. and 13 Rep. 30. &c.

Fol. 541. (U.) Court *Leet. What* [*it is*, and other Matters concerning it.]

* Br. Leet. pl. 14. cites S. C. & S. P. by Cotteſmere.

1. **A Court Leet is the** moſt ancient Court of the Land. * 7 H. 6. 12. b. 9 H. 6. 44. b.

Fitzh Leet. pl. 1. cites S. C. & S. P. per tot. Cur.

2. **The** Sheriff's Turn is not **any Court Leet.** * 18 H. 6. 13. b. **Curia. Contra, 25 H. 8. 69.** for in a Leet they have Conuſance of Bread &c. which they have not in the Tourn of the Sheriff.

Fitzh. Leet. pl. 1 cites S. C. & S. P. becauſe a Man ſhall

3. **If a** Man hath a great Leet within his Seigniory, another cannot have a ſmall Leet within the Purſuit, [Precinct] of a Manor **which is** within the ſame Seigniory. 18 H. 6. 13. b. **Curia.**

not be obliged to come to 2 Leets by Reaſon of his Reſiance.——The Earl of N. had a Leet in T. of all the Reſiants in T. D. &c. and the Earl of D. had a Leet in every of theſe Vills &c and at the holding of the Grand Leet, every one of the Inferior Leets *ſend a Conſtable and four Men who preſent in the Grand Leet all Matters preſentable* in Leets of Things done within their reſpective Leets, and this had been the Cuſtom Time out of Mind. If the Conſtable and four Men of any of the Vills do not attend, the *Vill ſhall be amerced*, but no more of the Inhabitants are obliged to attend. And in *Avowry* there ought to be made a *ſpecial Preſcription*, and not a general one as appears 8 [18] H. 6. 13. 13 E. 3. Leet 7. 11 H. 3. Title Iſſue. 40. Per tot. Cur. Cro. J. 583, 584. pl. 4. Mich. 18 Jac. B. R. Cook v. Stubbs.

6 Rep. 12. a. that the Steward is

4. **The** Steward is Judge **in this, and not the Suitors. Co. 6. Jentleman 12. Contra** 17 H. 6. 13.

Judge in the Leet, and the Sheriff in the Tourn, cites 10 H. 6, 7. 7 H. 6. 12. 12 H. 7. 15.——Br. Leet. pl. 14. cites 7 H. 6. 12. that the Steward is Judge in the Leet and may aſſeſs a Fine, per Cotteſmere; And by Paſton, ſo far as his Power extends he has equal Power with the Juſtices, to which Newton agreed.——[Roll ſeems to be miſprinted both as to the (Contra) and the Year; For in Year Book is no ſuch Year, as (17) and Mich. 7 H. 6. 12. b. 13. a. pl. 17 has the S. P. as above.]——8 Rep 38. b. Trin. 30 Eliz. C. B. in Grieſley's Caſe, reſolved, per tot. Cur. that the Steward is Judge.

5. **If a Man be** elected **in a Court Leet** to be a Conſtable within the Juriſdiction of the Leet, **and** before he is ſworn, the Juſtices of Peace at their Seſſions diſcharge him, becauſe he is a Maſter of Arts, **or for other Cauſe,** and elect and ſwear another **to be Conſtable there;**

upon

upon a Complaint of this to the Court of King's Bench, the Court of King's Bench may grant a Writ to discharge a last Man, and to swear him that was elected at the Leet, because the Election of the Constable belongs properly to the Leet, without a reasonable Cause to the contrary. Hill. 10 Car. B. R. *Herson's Case*, who was elected in the Leet of the Bishop of Winton, in Waltham-Welbeck in Comitatu Southampton, and the Writ granted accordingly.

6. Tr. 6 Car. B. R. *Arundel's* Case of Dorsetshire, a like Writ granted also.

7. The Leet *was derived out of the Turn* of the Sheriff; Per Fineux. Br. Leet, pl. 24. cites 2 H. 7. 15.

8. A Leet may be *within a Hundred or belonging to* an Hundred; It may be *Parcel of* an Hundred. Arg. Cart. 177. cites 8 H. 7. 1. 12 H. 7. 15. 2 H. 4. 24.

A Leet is not incident to a Hundred but it may be appendant to it; Per Keble, Rede and Fineux. Br. Leet pl. 24. cites 2 H. 7. 15. ——Ibid. pl. 23 cites 8 H. 7. 1. S. P. by the Opinion of six Justices against three.

9 Of ancient Time the Sheriff had two great Courts, viz. the Tourne, and the County Court; afterwards for the ease of the People, and especially for the Husbandman, that each of them might the better follow their Business in their several Degrees, this Court here spoken of, viz. *View of Frank-pledge, or Leet was by the King divided, and deriv'd from the Tourn, and granted to the Lords to have the view of the Tenants and Resiants within their Manors*, &c. *So as the Tenants, and Resiants, should have the same Justice, that they had before in the Tourn, done unto them at their own Doors*, without any Charge or loss of Time, *and for that Cause came the Duty in many Leets to the Lord De Certo Letæ*, towards the Charge of obtaining the Grant of the said Leet. *So*, likewise, and for the same Reason, *were Hundreds, and Hundred Courts divided and deriv'd from the County Courts*, and this the King might do, for the Tourn and Leet both are the King's Courts of Record; And as the King may grant a Man to have Power Tenere placita within a certain Precinct, &c. before certain Judges, and in a Manner exempt it from the Jurisdiction of his higher Courts of Justice, so might he do in case of the Tourn, and Hundred Courts, so as the Courts and Judges may be changed, but the Laws and Customs, whereby the Courts proceed, cannot be alter'd. And as the *County Court, and Hundred Court are of one Jurisdiction, so the Tourn and Leet be also of one* and the same Jurisdiction; for Derivativa potestas est ejusdem Jurisdictionis cum Primitiva. 2 Inst. 71.

10. Court Leet may be *divided*, As where the Manor of D. extends into A. B and C. by a grant of totum Manerium Suum de D. in B. there being a Court Leet in D. the Grantee may keep a Court Leet in B. Sic Dictum fuit. Cro. E. 39. pl. 1. Pasch. 27 Eliz. C. B. in Case of Morris v. Smith and Paget. But See tit. Manor (G)

11. Every Leet is the *King's Court* tho' another has the Profit or Commodity of it. Arg. 4 Le. 105. pl. 215. Mich. 29 Eliz. B. R. Anon. A Leet *is the Court of the King*. 2 Inst. 143.

A *Leet was* once one of the greatest Courts the King had, which was *Constituted by* the Monarch of the Saxons, but now is but the Shadow of it. Per Doderidge. J. Roll R. 73. pl. 16. Mich. 12 Jac. B. R. in Case of Bullen v. Godfrey.

12. Two Leets can't be *in one Place Insimul*. Mo. 427. pl. 595. Hill. 38 Eliz. Lord Norris v. Barret.

13. Agreed, that the Lord of the Manor and Leet is *to provide Stocks* as well as Tumbrel, and if he does not, he forfeits his Liberty for his Negligence. Mo. 574. pl. 789. Trin. 40 Eliz. in Case of Strogs v. Stevenson. Cro. E. 698. pl. 11. Stevertson v. Stroggs. S.

C held that Pillory and Tumbrel ought to be provided by the Lord of the Liberty and not by the Vill, unleſs there be a Preſcription to the Contrary, which ought to be ſpecially alledg'd; For they being for Execution of Juſtice within the Liberty, he ought to ſee it to be done.

Stevenſon —But See Cart. 29. that the *Stocks* are to be at the Charge of the Town, and it is a forfeiture of 5 l. if a Town has none.

14. The King has Power to make and *create* a Leet anew, where none was before. A *Diſtreſs* is incident of Right, but in a Court Baron a *Preſcription* muſt be laid to diſtrein. Brownl. 36. Anon.

15. *Private Leets* as to this Purpoſe are within the Leet of the Hundred, to inquire of Things omitted by them to be inquired being publick *Nucances*. Cro. J. 551. pl. 13. Mich. 17 Jac. B. R. Loader v. Samuell.

S. P. Contra. But in ſuch Caſe a Writ may be directed to the Sheriff to inquire thereof, and by the Book of 29 E. 3. this Writ is not taken away by the *Statute* 28 *E.* 3. 9. made the Year before, which was then freſh in the Judges Memory. 4 Inſt. 261.

16. The *Grand Leet* is called *Turn*, and is in Nature of the Sheriffs Turn which has Juriſdiction of all inferiour Leets within it. Cro. J. 584. pl. 4 Mich. 18 Jac. B. R. Cook v. Stubbs.

17. *Every Man ought to be within a Leet*, * and *none can be of two Leets*; Per Cur. Cro. J. 584. pl. 4. Mich. 18 Jac. B. R. in Caſe of Cook v. Stubbs.

* Jo. 283. S. P.——A Man cannot be attendant at two Leets, if they be held at ſeveral Days; Per Cur. Het. 21. Trin. 3 Car. C. B. in Caſe of Eve v. Wright.

18. When a *Hundred Leet* is *granted to a Subject* it *is a Franchiſe*; Per Hale Ch. J. Freem. Rep. 349. in pl. 433. Mich. 1673.

19. In the Hundred of Norton Ferris there is an ancient Borough call'd Wincaunton, which has a Leet, and there was alſo a Leet in the Hundred. Here *tho' there be a Leet in the Hundred*, which cannot be but by Preſcription, yet *there may be a ſubordinate Leet within it, and the Reſiants of this Leet may be exempt from their Attendance at the Leet of the Hundred, unleſs the Hundred by Preſcription claim it.* But Hale Ch. J. ſaid, there is a *difference between a Leet in an ancient Borough*, (who in Eyre appear'd by four, and was always look'd upon diſtinct from the Hundred,) *and* between *Leets in Upland Towns, where he that owes Suit to the Leet may owe none to the Hundred, but by Cuſtom he may do ſo.* But the chuſing of Conſtables and other Officers for the Hundred out of the Leet of Wincaunton, may be out of the Leet. 3 Keb. 197. pl. 44. and 230, 231. pl. 47. Mich. 25 Car. 2. B. R. The King v. King.

20. In a *Preſentment* in a Leet it is not neceſſary to ſhew *Coment* nor *Quo Jure*, the Court is held. 1 Salk. 200. The King v. Gilbert.

In all Leets they only ſay, Ad Cur &c tent' ſuch a Day without ſhewing their Authority. But it had been a good Objection not to ſhew Authority if conſtant Practice had not been otherwiſe. 12 Mod. 4. S. C. Paſch. 3 W. & M.

(U. 2) Who muſt appear at it.

1. *FEMES and Tenants in ancient Demeſne* are exempt from Leets and Tourns. Br. Exemption pl. 13. cites the Regiſter. 181.

2. In Debt for an Amerciament in a Leet, the Caſe was, that the *Abbot of A. was ſeiſed of the Hundred of H. in Berks, and of a Leet appendant* thereto *by Preſcription, to be held once a Year, within a Month of Eaſter.* The Diſſolution was found and that the Towns of C. and N. with 24 others were within the Hundred and Leet, and that King *Ed.* 6. *granted to one L. ſeveral Lands in N. Parcel of the Poſſeſſions of the Abby and* granted alſo *omnes Curias, Letas,* &c. *& Amerciamenta præmiſſis in N. pertinen'* provenien', &c. *and that the ſaid L. and his Heirs, ſhould have tot' talia & conſimilia Curias, Letas &c. Amerciamenta & Hereditamenta as the Abbot had* infra the ſaid Lands &c. and *afterwards King E.* 6 *granted the Hundred and the Leet to one O. which by ſeveral meſne Conveyances came to the Lord Norris, the now Plaintiff, and that B. the Defendant claimed under L. and that he was an Inhabitant in N. and being ſummoned to be at the Leet, he made Default and was amerced to* 40*s. for which the Action was brought*; adjudged, that L. had no Leet nor Amercment by this Grant, neither was he diſcharged from the general Leet of the Hundred, becauſe the Leet mentioned in this grant is reſtrained to the Land granted; for it is Præmiſſis in N. pertinen' & provenien', and there was no ſuch Leet there before the Grant; For the Leet which the Abbot had, and which came to the King upon the Diſſolution was appendant to the Hundred and did not belong to the Lands granted to L. and as to the 2d Clauſe L. could not have the like Leet as the Abbot had, for when eadem may be had and the Party has Words to have *eadem*, he ſhall never have *conſimilia*; For eadem remains in the King, and if the King has a Leet no Man can have a Leet in the ſame Place, becauſe 2 Leets cannot be in one Place inſimul, and as for the Word Amerciamenta, it cannot properly be ſaid Provenien' de Præmiſſis, becauſe they do not iſſue out of Land but by reaſon of an Offence in another Place where the Leet is held, and the Amerciamenta in the Grant to L. are reſtrained infra terras in the Grant, and the Abbot had no Leet infra the Lands granted to L. but infra that and other Lands intirely. Mo. 426. pl. 595. Hill. 28 Eliz. B. R. Lord Norris v. Barrett.

3. *Eccleſiaſtical Perſons* are exempted by the Statute of Marlebridge cap. 10. 52 H. 3. from appearing at the Sheriff's Tourns, and conſequently at Leets which are derived out of the Tourns. And if they ſhould be diſtrain'd for any Amerciament &c. for not appearing in the Leet, they have a Writ upon the Statute by way of Privilege. Arg. 8 Mod. 297. Trin. 10 Geo. 1. in the Exchequer in Morgan's Caſe.

4. Perſons exempted by the Common Law, are ſuch as *Infants under* 12 and *Women* &c. per Cur. 8. Mod 300. Trin. 10 Geo. 1. in the Exchequer in Morgan's Caſe.

(X) The *Juriſdiction* [*of the Leet.*]

1. VIDE the Statute of 18 Ed. 8. which ſhews of what Things a Leet hath Conuſance.

* Br. Leet pl. 14. cites S. C. & S. P. by Cotteſmore ——

2. They have Power to hold Plea of all Treaſons and Felonies, beſides the Death of a Man, and Rape of a Woman. * 7 H. 6. 22. b. † 9 H. 6. 44. b.

Fitzh. Leet pl. 10. cites S. C. & S. P. of Petty Treaſon and Felony, but not of Rape, or the Death of a Man.

† Br. Leet pl. 2. cites S. C. & S P. Br. Leet pl. 26. cites 22 E. 4. 22. S. P. as to the inquiring of all Felonies at Common Law, becauſe they are the Kings Courts. —— *Rape* is not now Inquirable in the Leet, for tho' it was Felony at the Common Law, yet the Nature of the Offence being charged to be no Felony by W. 1. cap. B. when another Act made it Felony again, yet could not the Leet inquire thereof as a Felony. 2 Inſt. 81.

Br. Leet pl. 2. cites S. C & S. P. per Babington, Ch. J.

3. They have Power to enquire of Treaſon, as of the forging of falſe Money. 9 H. 6. 44. b.

* Br Leet pl. 2. cites S. C.

4. So they may enquire of High-Treaſon done to the King himſelf. 9 H. 6. 44. b. Quære † 10 H. 6. 7.

† Fitzh. Ley pl. 5. cites S. C. of Treaſon. —— Br. Ley gager pl. 99. cites S. C. of Treaſon [but no mention of the word (High)] and Brooke ſays it ſeems, that of Petty Treaſon he may inquire but not of High Treaſon

Fitzh. Ley. pl. 5. cites S. C. —— Br. Ley-gager pl. 99. cites S. C.

5. They have Power to enquire of Felony. 10 H. 6. 7.

S. C. at tit. Nuſance (Q) pl. 7. —— Br. Leet pl. 30. Brooke

6. A Man cannot be amerced in a Leet for ſurcharging a Common, for that this concerns a private Intereſt, and not the Publick; for this Court is for Royal Juſtices, and not for private Matters. M. 12 Ja. B. between *Bore and Stoner*, adjudged.

makes a Quære of Preſentment of Oppreſſion of Common, for it is very Uſual in Leets, which may be by Cuſtom, and Nuſance is not ſuch as may have an Action, but that which is ſuch to a great Number of People, as ſtopping of a Way or not repairing a Bridge &c.

As in *Hedges, Ditches* and the like,

7. They may enquire of Common Nuſances done to the Common People. 9 H. 6. 45.

and in the Waſte Places though the Lord has no Land in the ſame Vill. Br. Leet pl. 2. cites S. C. —— Br Leet pl. 26. cites 22 E. 4. 22 S P as to all Common Nuſances as *Bloodſhed*, *Waſſing or Clipping of Gold or Silver*, [but Brooke ſays Quære inde] * *Nightwalkers* and the like but not of Cloſe broken, becauſe this is Particular, but Ditch not Scoured or *Bridge broken*, ſhall be inquir'd a Nuſance. ——So of *Robbery* which is a common Nuſance. Mich. 22 E 4. b. pl. 2. —— The Steward of the Leet cannot take an Indictment of a Robbery *done out of his Precinct*, nor of the Death of a Man; For this belongs not to the Leet; And if he does the Lord ſhall be puniſhed for Contempt Br. Leet pl. 18. cites 41 Aſſ. 30 —— And Ibid. pl. 31. cites S C. that Proceſs was made againſt the Lord to fine him and his Steward, becauſe the Steward took an Indictment in the Leet of a Robbery done at D. whereas there is no ſuch Vill in that County, and alſo for taking an Indictment of the Death of a Man, which do not appertain to the Leet and ſo he incroach'd upon the King, and therefore

therefore the Juſtices of B. R. would not arraign the Party on this Indictment, and the Lord was fined 40 s.

* Poph. 208. Hill. 2 Car. B. R. Wheelhorſe's Caſe. S. P.

8. **They have Power to enquire of all Manner of** Affrayes **and** Aſſaults. 10 H. 6. 7. Fitzh. Ley. pl 5. cites S. C. & S. P.

by Newton.——Br. Ley gager pl. 99. cites S. C. & S. P. accordingly, Quod fuit conceſſum.——An Indictment of Aſſault and Battery found in a Leet without any Blood ſpilt is not good. D. 233. b. 234. a. pl. 14 Mich. 6 & 7 Eliz. 3. cites 13 E. 4. 10.

9. **They have Conuſance of** Bread and Beer. 18 H. 6. 13. b. Fitzh. Leet pl 1. cites S. C. & S. P. per tot. Cur.

10. **If a Man, by Reaſon of a Tenure, ought to** cleanſe a Ditch **next the high Street, and does [not] cleanſe it, by which the Street is ſurrounded, ſo that the People cannot paſs; he may be amerced in the Leet for it, and may be awarded to be** * diſtrained **to cleanſe it.** † 29 E. 3 29. **Curia.** * This Point is at Paſch. 29 E. 3. 28. a. the firſt Plea and no ſuch Point at 29.

and ſo ſeems to be miſprinted. † A Diſtreſs in is incident to a Court Leet of Common Right. Brownl. 36. Anon —— Amercement in a Court Leet for *not Scouring a Ditch in a Highway*, and good, and reſolved the Party may be puniſhed in the Leet, and alſo by the Statute 18 Eliz. 1. for diverſe Cauſes. Raym. 250. Hill. 30 & 31 Car. 2. C. B. Stephens v. Haynes.

11. **If one** receives a poor Man to be his Tenant **in a Town,** who is chargable to the Town, **and this** againſt a By-Law made by the Town, **the** Town having Power to make ſuch By-Laws, **this is puniſhable in the Leet. p. 8 Ja. in Camera Scaccarii per Curiam.** Fol. 542. Lane 55, 56. Trin. 7 Jac. S. P. and ſeems

to be S. C. by Cuſtom ſuch a By-Law is good; But by Snig and Altham clearly, the Steward cannot amerce one for ſuch a Cauſe without an Order [or By-Law] with a Pain made before.

12. **An** Order with a Pain **may be made by the Steward of a Leet in a Leet,** that none ſhall receive ſuch Tenants **as ſhall be chargeable to the Pariſh. P. 8 Ja.** A *By Law impoſing a Penalty* of 5 l. per Month *on*

every one within a Leet that ſhall take or place any Inmate within any Houſe there, without giving Security to the Overſeers of the Pariſh, *to diſcharge the Pariſh*; Per Hale is a good By-Law and frequent in Leets. Hard. 471. Trin 19 Car. 2. in Scacc. Anon. ——This By-Law was made at a Court Leet, held pro Rege within his Honour of Grafton, and this Fine was retreated into the Exchequer, and Proceſs iſſued to levy it. Hale Ch B. ſaid it was hard to eſtreat the Fine hither without taking the uſual Remedy for it by Diſtreſs; and to extend the Party's Lands upon it, when perhaps he may have ſomething to plead to it; as that he is not within the Leet, or that he received no Inmate; But the Officers of the Court ſaid, it was uſual to eſtreat ſuch Fines in the Exchequer when they belonged to the King; Otherwiſe when they belong to Subjects. And thereupon the Party was put to plead. Hard. 471. pl. 6.

13. A Preſentment was in a Leet, *that J. N. had incloſed ſuch certain Lands, which ought to lie in Common* for the Inhabitants of the Vill, is a void Preſentment, though it is laid to be ad Nocumentum Inhabitantum; For *this is a Tort, but no Nuſance*; Quod Nota per Judicium; For the ſeveral Parties may in this Caſe have their Action. Br. Leet, pl. 30. cites 27 Aſſ. 6.

14. A Leet has Power to *amerce a Man for a Nuſance, and alſo to award that the Offender be diſtrain'd to amend it*; Per Cur. Br. Leet, pl. 35. cites 29 E. 3. 28. and Fitzh. Avowry, 265. For an Amercement in a Leet or Hundred, a Man *may*

diſtrain the Beaſts of the Offender in any Place within the Precinct of the Leet or Hundred. Quod Nota. Br.

Br. Leet, pl. 28. cites 2 H. 4. 24 ——A Leet by Preſcription may diſtrain for an Amercement, and the *Lord may ſell the Diſtreſs*; becauſe the King may do ſo, and the Leet is the King's, though the Lord has the Profits; For all Juſtice is in the King, and therefore the Courts and Gaols in Towns Corporate are written by the King Curia Noſtra & Gaola Noſtra in Cuſtodia veſtra exiſtent'. Br. Leet, pl. 34 cites 21 H. 7. 40.——Br. Preſcription, pl. 40. cites S. C.——Nota pro lege, *if a Penalty be ſet* on a Man in a Leet *to redreſs a Nuſance by ſuch a Day* ſub Pœna 10 l. *and after it is preſented that he had not done it*, and that he ſhall forfeit the Penalty, this is a good Preſentment, and *the Penalty ſhall not be otherwiſe affeer'd*, and the *Lord ſhall have Action of Debt* clearly, *but he cannot diſtrain and make Avowry, unleſs by Preſcription* of Uſage to diſtrain and make Avowry. Br. Leet, pl. 37. cites 23 H. 8.

It belongs to the King by Reaſon of the Leet, per Thorp and Belknap. Br. Leet, pl. 5. cites S. C.——Br. Eſtray, pl. 2. cites S. C.

15. *Lord of a Hundred cannot by reaſon of the Hundred have Waif*; For he cannot try it by Jury; For he cannot compel the *Suitors to be ſworn*; *Contra in a Leet*, therefore Waif belongs to it, and the *Day of the Leet is the King's*, and the *Lord is only his Miniſter for the Time*. Br. Court Baron, pl. 2. cites 44 E. 3. 19.

Fitzh. Franchiſe, pl. 2. cites S. C.

16. The Bailiffs of St. Albans by Certiorari in Banco *removed three Priſoners into B. R.* whereof *the one was indicted in another County*, and therefore was *ſent to the Marſhalſea*, and the *others were ſent back*, *becauſe Nothing was againſt them in Banco*, nor were they indicted, and Leet may inquire of Felony, but if *ſuſpected Perſons* are *taken and not indicted*, they *cannot deliver them*, *but they ſhall be delivered before Juſtices of Deliverance by Proclamation*, and though the *Leet may inquire* of Felons, yet they *cannot arraign them*. Br. Corone, pl. 23. cites 8. H. 4. 18.

17. Leet may *inquire of corrupt Victuals*. Br. Leet, pl. 1. cites 9 H. 6. 53.

Fr. Leet, pl. 36 cites S. C. & S. P.

18. Indictment taken in a Leet is as well as in B. R. of Things touching the Juriſdiction of the Leet, and it *may commit a Man to Priſon, and aſſeſs a Fine*, quod Conceſſum fuit, quod nota. Br. Ley Gager, pl. 99. cites 10. H. 6. 7.

Br. Leet, pl. 26 cites S. C & S. P. ——Fitzh. Tourn of Sheriff, pl. 5 cites S. C. & S. P

19. Nota that *Things given by Statute* as *Rape*, *Putting out Eyes*, *Cutting out of Tongues* and the like, which are *made Felony by Statute*, thoſe ſhall not be inquir'd in the Leet, nor any others *but thoſe* which are Felony *at the Common Law*, and the others are void Preſentments; For Coram not Judice. Br. Preſentments in Courts, pl. 21. cites 22 E. 4. 22.

clearly by the Opinion of the whole Court. ——Jenk. 121. pl. 43. and 139. p'. 85. S. P. unleſs the Statute which creates the Offence, gives them Power. —— Br. Indictment, pl. 28. cites 6 H. 7. 4. S. P. —— Br. Leet, pl. 22. cites S.C. & S. P. and that the Law is the ſame of Labourers and Artificers.

Br. Preſcription, pl. 40. cites S.C.

20. A Leet may make By-Laws to bind themſelves. Br. Leet, pl. 34. cites 21 H. 7. 40.

21. It was adjudged, that *Pound-Breach* is not inquirable in a Leet, becauſe it is not a common Nuſance. But Rhodes ſaid, that *exceſſive Toll* is inquirable there. 4 Le. 12. pl. 46. Paſch. 27 Eliz. C. B. Sanderſon's Caſe.

22. Court Leet cannot amerce for *leaving his Gates open*, ad Nocumentum Inhabitantium. Mo. 356. pl. 484. Trin. 36 Eliz. Evington v. Brimſton.

23. In Replevin the Defendant made Conuſance as Bailiff to G. for that he had a Leet within his Manor of D. and that the Plaintiff was amerced at ſuch a Court, for *putting his Geeſe upon the Common* there, and for that Amerciament he diſtrained; But the Court held, that this was not an Article inquirable in a Leet, or puniſhable there, and therefore the Plaintiff had Judgment. Cro. Eliz. 448. pl. 14. Mich. 37 & 38 Eliz. C B. Wormleighton v. Burton.

24. If

24. If a *Man* be *hindred to go in a common Highway*, or if a *Ditch* be *made athwart that Way ſo as he cannot go*, it is preſentable in this Court. Co. Litt. 56. a. 5 Rep. 73. a. S. P. at the End of the Caſe.

25. In ancient Times the King's Courts, and eſpecially the Leets, had Power to inquire of, and puniſh *Fornication and Adultery* by the Name of Letherwite. 2 Inſt. 488.

26. Jurors in Leets may inquire of *Inmates* by 31 Eliz. cap. 7. Par. 3. 2 Inſt. 738.

27. Leet and Tourn cannot inquire of *private Treſpaſſes*. Jenk. 138. pl. 85. As a *private Aſſault* which is no Terror to the People. 1 Hawk. Pl. C. cap. 63. S. 1.

28. A *Railer and Sower of Diſcord* amongſt Neighbours is preſentable in a Leet. Hob. 246, 247. pl. 313. Mich. 16 Jac. Smith. v. Pannel. See tit. Prohibition (F) pl. 45. S. C. and the Notes there.

29. Debt was brought for 40 s. impoſed on the Defendant at a Court Leet of the Plaintiffs for a *Contempt committed* there; which was, that he put on his Hat in the Court, and being admoniſhed by the Steward for ſo doing, he replied, viz. I do not Value what you do. It was adjudg'd for the Plaintiff. Raym. 68. Hill. 14 & 15 Car. 2. B. R. Bathurſt v. Cox.

30. The Bailiff of Weſtminſter had levied Money upon ſeveral Perſons upon Preſentments in the Leet there for *uſing Trades not having been Apprentices*; And upon Complaint made of this againſt B. it was agreed, per Cur. that the Statute 5 Eliz. does not give the Leet any Power to proceed thereupon, and directed that thoſe Aliens that ſo uſe Trades not having been Apprentices ſhall be preſented at the Seſſions or in B. R. Sid. 289. pl. 4. Trin. 18 Car. 2. B. R. Amy v. Bennet. Raym. 154. Anon. S. C. ſays, that B. the Defendant Bailiff of this Liberty would have levied 40s. a Month upon them, and upon their removing the Preſentments by Certiorari, it was debated if the Leet had Conuſance of ſuch Things by the laſt Clauſe in Stat 31 Eliz. cap. 5. and it ſeems not, becauſe the Offences there mention'd, and the Courts ſhall be expounded Reddendo ſingula ſingulis.

31. The Defendant was preſented at a Leet, for *digging Coney-Burrows, and breaking the Soil in the Lord's Waſte*; It was mov'd to quaſh it, becauſe it is not Ad Commune Nocumentum. Keeling Ch. J ſaid, that a Leet cannot amerce for any Thing done to the Damage of the Lord and the Preſentment was quaſh'd. Raym. 160. Hill. 18 & 19 Car. 2. B. R. Ayre's Caſe. The Leet can only amerce *for a publick Nuſance not for a private one*, or for particular Damage to the Lord, which though it may be preſented for the Information of the Lord, yet the Court cannot puniſh the Offender. 1 Saund. 135. Hill. 19 & 20 Car. 2. in Caſe of the King v. Dickenſon.

One cannot be amerced in a Leet for a *private Nuſance*, but may for a publick; Per Cur. 12 Mod 598. Mich. 13 W. 3. Gwin v. Thornborough.

32. By two Juſtices Court Leet may, by Cuſtom, *make By-Laws* touching *Common* though not originally; but per Tirrel J. Leets have to do only with the Peace, and if a Leet may make a *By*-Law as to Commons, then the Leet may make one By-Law and the Court Baron another, and it cannot be known which is to be obey'd, and as to the Caſes put on the other Side, they muſt be underſtood where a Court Leet and Court Baron are held together. But per Wild and Archer Juſtices againſt Tyrrel Judgment was given that the By-Law was good. Cart. 179. Hill. 18 & 19 Car. 2. C. B. The Earl of Exeter v. Smith. 2 Keb. 367. pl. 22. S. C. adjudged accordingly.

33. In Treſpaſs for breaking his Houſe and taking away a Silver Cup, the Defendant *juſtified for a Fine* of 5 l. *impoſed by the Steward of the Leet for contemptuous Words ſpoken to the Steward in the Court Leet*, Ipſo tunc judicialiter ſedente, (viz.) that the Houſe in which the Court was held, was the Houſe of the Mayor of Sudbury, and that John Skinner, who, then and there being Preſent, has more Right to be there than the Steward, and if he was Mayor of Sudbury he could not ſuffer the Court to be held there. The Plaintiff replied, that the ſaid Houſe was the Town-Hall of that Borough, and that Skinner was then Mayor of the ſaid Borough, and the Plaintiff a Free Burgeſs thereof, and that he quiete & pacifice ſpoke the Words. Upon a Demurrer the Plaintiff had Judgment, per tot. Cur. For no ſuch Fine ought to be impoſed for the ſaid Words. 2 Jo. 229. Mich. 34 Car. 2. B. R. Berrington v. Brooks.

34. Leet cannot amerce for a private Nuſance, but may for a publick. Per Cur. 12 Mod. 598. Mich. 13 W. 3. Gwin v. Thornborough.

(Y) *Collateral Authority* of the Leet.

Br. Leet, pl. 14. cites S. C. & S. P by Newton J. ——— Ibid. pl. 24. cites 2 H 7. 15. S. P. by Fineux. ——— He may ſwear a Stranger there. Br. Leet, pl. 20. cites 3 H. 7. 4. Fairfax J. For it is for the King's Advantage.

1. IF a Man be riding there, where a Leet is, the Steward, for want of others, may compel him to be ſworn. 7 H. 6. 13.

Br. Leet, pl. 14. cites S. C. ——— Br. Debt, pl. 85 cites S. C. and that the Lord brought Action of Debt, and the Defendant demurred. Quære. ——— 8 Rep. 38. b. S. C. cited per Cur. and affirmed. ——— See tit. Amercement (U) pl. 1. S. C. and (Y) pl. 2. S. C. and the Notes there.

2. If the Bailiff of the Court, or other Officer, will not make a Panel to enquire &c. upon the Command of the Steward, or will not perform his Duty, he may be fined. 7 H. 6. 12. b.

See pl. 2. and the Notes.

3. So he may be commanded to do it upon a Pain, and if he does not do it, he ſhall loſe the Pain. 7 H. 6. 12. b.

Br. Cuſtoms, pl. 3. cites S. C. and ſuch a Cuſtom to amerce them being alleg'd, the whole Court held it no Cuſtom but Extortion; For the Verdict of one 12 is intended in Law to be as good as the Verdict of another 12 but had the Cuſtom been of Concealments it had been good. ——— Fitzh. Cuſtom, pl. 1. S. C. and ſuch Cuſtom is againſt Common Right, but it is uſual to amerce them if they conceal any Thing which they ought to preſent, and this may lie in Cuſtom.

4. If the Petit 12 make a falſe Preſentment, and this is found falſe by the grand Inqueſt, yet the Petit 12 ſhall not be amerced. 9 H. 6. 44. b.

Hob. 129. pl. 166. Paſch. 14 Jac. S. C. — An Amercement ought not to be affeered to a certain Sum.

5. If a Man be amerced in a Leet, he ought to be amerced to a certain Sum, as 10 s. 20 s. or other certain Sum, and ought not to be amerced in general, and after affeered to a certain Sum; for the Amercement ought to be certain, and it ought after to be affeered and mitigated

mitigated by others. Hobarts Reports 173. between *Wilton and Hardingham.*

ment in a Court Leet for an Of-

fence presented need not be affeer'd, and Hob. 129. was denied by Holt Ch. J. Show. 62. Mich. 1 W. & M. in Case of Matthews v. Cary.——See tit. Amercement. (E) and (G)

6. A Steward in a Leet may *asses a Fine on a Tithingman who will not Present*, and if the Lord brings Debt thereof the Defendant cannot wage his Law; because the Leet is a Court of Record. Br. Leet pl. 36. cites 10 H. 6. 7.

Br. Ley-Gager pl. 99. cites S. C. accordingly.——S. C. cited and agreed per tot. Cur. 8 Rep. 38. b.

7. A Common Person who has a Leet may *sell the Distress* as the King may; For the Court is the King's though a Common Person has it. Br. Leet pl. 20. cites 3 H. 7. 4. by Fairfax J.

8. If any *Contempt* or Disturbance to the Court be *committed in any Court of Record*, the Judges may impose a reasonable Fine on the Offenders, and a *Leet is a Court of Record, and the Steward is Judge there, and therefore may impose a reasonable Fine on any such Offenders* for an Offence done to the Court before him. As if the Bailiff of a Leet refuses to execute his Office the Steward shall impose a reasonable Fine upon him. Resolv'd per tot. Cur. 8 Rep. 38. b. Trin. 30 Eliz. C. B. Grisley's Case.

9. If *any misbehaves himself in the Leet in any outragious Manner*, the Steward may commit him, per Popham Ch. J. Ow. 117. Pasch. 37 Eliz. in Case of the Earle of Lincoln v. Fisher.

10. The Defendant *gave the* Plaintiff's *Steward the Lie openly in the Leet*, for which the Steward set a Fine of 20 s. upon him. The Plaintiff brought Debt for the Fine; All the Justices agreed upon Debate between them, the Action was maintainable, because they are words of Contempt in a Court of Justice to a Judge, for which the Judge might Fine him. Mo. 470. pl. 470. Mich. 39 & 40 Eliz. Lincoln (Earl of) v. Fisher.

Cro. E. 581. pl. 4. S. C. and all the Court held, that for such Fines assess'd by the Steward Debt lies without a

Prescription alledg'd to assess such Fines, or to have such an Action. Wherefore it was adjudg'd for the Plaintiff.——Ow. 113. S. C. Gawdy at first held that the Action would not lie; But afterwards chang'd his Opinion, and the Plaintiff had Judgment to recover.

11. The Steward in the Leet may *take Recognizances for keeping the Peace.* 4 Inst. 263, 264. cap. 54.

Br. Leet pl 39. cites F. N. B. 82.

12. If a *Juror sworn to inquire* for the King *be arrested*, by which the King's Court is disturbed, and the Arrest made by an Officer of B. R. Upon Affidavit thereof B. R. will grant an *Attachment*, but denied it against such Arrest made by Officers of the Marches of Wales. But they advised to file an *Information against the Officer*, for this Disturbance to the Leet, Lat. 198. Trin. 3 Car. Anon.

(Y. 2) Where the Court is not held, what is to be done.

1. THE *Portreeve* of Yeovil in the County of Somerſet *was uſually elected to continue in his Office for a Year, and at the End of the Year a new one to be choſen and ſworn in the Leet* by the Steward of Sir Edward Phillips, Lord of the Manor, *which* on ſome Diſcord with Sir Edward *was refuſed to be done*, and thereupon *Proceſs was awarded out of B. R. commanding the Oath to be tendered* to the Portreeve; For B. R. is the Supreme Court which ought to do Juſtice to all the King's Subjects. 2 Roll Rep. 82. Paſch. 17 Jac. B. R. the Portreeve of Yeovill's Caſe.

(Y. 3) Preſentments. How they muſt be.

1. PReſentments in Leets *ought to be certain, and ſhew at what Place the Nuſance was made, and to ſay Infra Juriſdictionem hujus Curiæ*; for it is the Declaration of the King, which ought to be good to every common Intent, as it is ſaid elſewhere; And if it be a Nuſance to other Land they ought to ſay certainly where the Nuſance is &c. and where the Land lies, to which the Nuſance is done. Br. Leet, pl. 33. cites 5 H. 7. 3.

2. In every Preſentment of a *Nuſance* in a Court Leet it muſt be mentioned to be *Ad Nocumentum ligeorum Domini Regis*; and the averring in Action of Debt brought for the Pain aſſeſſed, that it was *Ad Commune Nocumentum* is not ſufficient; For it muſt be in the Preſentment which is the Charge, and the omitting it is a Fault incurable. Cro. J. 382. pl. 10. Mich. 13 Jac. B. R. in Caſe of Prat v. Stearn.

3. Juratores pro Domino Rege & Domino Manerii & Tenentibus preſented the Defendant for *erecting a Glaſs-Houſe* &c. *ad magnum Nocumentum*; it was quaſhed; For though it is good for the King and the Lord of the Manor Leets being granted to the Lords as derived out of the Torn, and as for Tenentibus, it is only Surpluſage, yet this Preſentment is ill, becauſe it is *not* ſaid *Ad Commune Nocumentum*. 1 Vent. 26. Paſch. 21 Car. 2. B. R. Anon.

2 Saund. 293. Dakin's Caſe. S. C. the Preſentment was quaſhed per tot. Cur. — 2 Keb. 731 pl. 18. the King v. Dakin S. C. 18 Nov. per and this was alſo held ill.

7. The Defendant was preſented and fined in a Leet for refuſing the Office of a Conſtable; It was moved to quaſh it, becauſe it *expreſs'd the Court to be held infra unum Menſem Sancti Michaelis, viz.* 12 *November*, which is above a Month after Michaelmas, and it is neceſſary to ſet down the preciſe Day, for it may elſe be on a Sunday, and yet within a Month after Michaelmas, and for this Cauſe it was quaſhed. Vent. 107. Hill. 22 & 23 Car. 2. B. R. Dacon's Caſe.

and for that Reaſon the Preſentment was quaſh'd; And the Preſentment was alſo Tent' Adjornamentum prædictum, whereas no Adjornment was mention'd before to be entred,

(Y. 4) Preſentments in Leets, and Things done there. Pleadings in General.

1. NOTA, that Preſentments in Leets, *which touch Frank-tenement, or bind the Franchiſe, ſhall be traverſable*; but contrary of other Preſentmentments in Leets. Br. Leet pl. 27. cites 45 E. 3. 8.

2. Treſpaſs upon the Caſe, the *Plaintiff preſcribed to have Leet in D. with all the Profits thereof, and that the Defendant had diſturb'd the Steward of the Plaintiff to hold Leet there* &c. and the Deſendant *ſaid, that the Plaintiff had Leet there ſemel in Anno*, Scil. *ſuch a Day after Eaſter, and that the Defendant has Leet there ſemel in Anno*, that is to ſay, *ſuch a Day after Mtchaelmas, and that the Plaintiff gave Warning to the Defendant* 15 *Days before the Leet, and that his Bailiff ſhould be with him if he would, and that he ſhould have the Moiety of the Profits of the Leet of the Plaintiff, and if he held his Leet in other Manner, that the Defendant had uſed to diſturb* &c. *and that the Plaintiff did not give Warning by* 15 *Days, by which he diſturb'd him to hold the Leet*, Prout ei bene licuit. Per Priſot the Deſendant ought to Traverſe Abſque hoc, that he and his Predeceſſors ought to have the entire Profits Prout, and by him the Plaintiff may maintain, that he and his Predeceſſors have had Leet by reaſonable Warning of three or four Days, Abſque hoc, that it has been uſual to Warn by 15 Days prout &c. by which Laicon ſaid as above, Abſque hoc, that the Plaintiff has had the entire Profits of the Leet, and Abſque hoc, that he has uſed to hold the Leet without ſpecial Warning in the Manner as we allege. Choke ſaid, the Warning is not alleg'd by us. Moyle ſaid, therefore it ſeems that the ſecond Traverſe is void, et adjornatur. Br. Traverſe per &c. pl. 158. cites 38 H. 6. 16.

3. *If Plea be removed into B. R. of which they cannot hold Plea as Formedon* &c. yet there *they ſhall hold Plea therein, as the Court where it ought to be brought ſhould do*, and ſhall make Proceſs per Grand Cape & petit Cape, and otherwiſe, as the firſt Court ought to do. And ſo if a Thing before Juſtices of Peace be removed before them. Per Fineux Ch. J. Br. Juriſdiction, pl. 46. cites 14 H. 7. 14.

4. A *Preſentment* in the Leet or Tourn, after the Day of the Preſentment, binds the Party for ever, and *is not traverſeable but in Caſes that touch ones Freehold, as* that one ought to *cleanſe the Highway &c. ratione Tenuræ ſuæ*; therefore the Courſe is to remove ſuch Preſentments into the King's Bench by *a Certiorari*, where he may Traverſe them. Finch's Law 386. 8vo. cites 5 H. 7. 3.

Br. Travers per &c. pl. 183. cites S. C. —— Br. Preſentment pl. 15. cites S. C. —— D. 13. b. pl. 64. Trin. 28 H. 8. S. P. by Shelly, Quod Baldwin conceſſit. But Fitzherbert ſaid, that Britton, who is good Authority, ſays, that every Preſentment is traverſable which is preſented in a Leet, and alſo in the Tourn of the Sheriff, out of which Leets were originally deriv'd &c. ——— S. C. as to Fitzherbert's Opinion cited Arg. 3 Mod. 138. ——— All Preſentments may be travers'd either by removing them into B. R. or in an Action. In Treſpaſs againſt the Bailiff you can't traverſe a Preſentment, but in a Replevin it may be done, and it will not be ſufficient to ſay, Quod preſentat' fuit, but the Fact muſt be ſet forth, and this Action is to try the Right, but the other only to recover Damages. Trin. 5 Ann. in Caſe of Brook v. Huſtler. ——— 1 Salk 56. S. C. but S. P. does not appear. ——— 11 Mod. 76. S. C. but S. P. does not appear.

5. A *Releaſe of all Demands doth not diſcharge a Man of his Suit to a Leet by reaſon of his Reſidency*, becauſe a Leet is the King's Court to

which every liege Subject is to come and perform his Allegience to him. And alſo becauſe Suit of Court is inſeperably incident to a Court Leet, which cannot be releaſed. Brownl. 186. Trin. 4 Jac. in Caſe of Tott v. Ingram.

6. In *Pleading the holding a Court*, it muſt *ſay the Place where was Part of the Manor, or holden of it* at leaſt. Hob. 56. Trin. 13 Jac. in Caſe of Foſter v. Jackſon.

12 Mod. 4. Paſch. 3 W. & M. the S. C. it had been a good Objection the not ſhewing Authority, if conſtant Practice had not been otherwiſe.

7. Upon a Certiorari to remove a Preſentment at a Leet for a Nuſance; Exception was taken, that the Leet not being of Common Right, but taken out of the Tourn, and the Tourn is of Common Right, therefore becauſe it is *not ſhewn how, nor by what Right this Court was held, whether by Patent or Preſcription*, it is not good; but the Court ſaid, the Precedents were all ſo, and over ruled the Exception. 1 Salk. 200. pl. 2. The King againſt Gilbert.

8. In Debt for an Amercement in a Court for not doing Suit, an Exception was taken that the *Court being uncertain* when it will be held, (that is where the Lord may hold it when he pleaſes,) a *particular and convenient Notice* ought to be given, when and where the Court is to be held, and cited 32. or 22 E. 4. 27. b. 28. a. 3 Cro. 353. 555, 556. and that a general Notice *in the Church* is not Notice *to incur a Forfeiture*, unleſs a particular Cuſtom for it. It was anſwered that, it is found that due Notice was given, and this the Judge of Aſſiſe is ſuppoſed upon the Evidence to direct the Jury. But Holt Ch. J. ſaid, we can't Judge of the Notice, becauſe you ought to have *ſhew'd particularly*, that he was ſummon'd to the Court at ſuch *Day and Place* to be held. Per Powell, J. To take Advantage of a Forfeiture *Notice* ſhould be *Perſonal, unleſs a particular Cuſtom to the contrary*. In *ancient Leets*, perſonal Notice perhaps is not Neceſſary; but Notice in Church and Market may be well. But otherwiſe where it is *not an ancient Leet*. Adjurnatur. 11 Mod. 76. Brook v. Huſtler.

See more as to the Juriſdiction &c. of Court Leets Kitch 16. &c.—4 Inſt. 261. cap. 54.—Prynn's Animadv. on 4 Inſt. 189, 180.—See Tit. Amercements.

MVSEVM BRITAN NICVM